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ABSTRACT

This manual is designed to educate human service agency management personnel involved in transportation about basic risk management principles and insurance issues. Chapter I illustrates the liability factors that create the insurance and risk management needs. Both legal and humanitarian obligations of human service agencies involved in transporting clients are discussed. Chapter II presents the basic vocabulary and concepts used by risk managers. Other topics are risk evaluation by the insurance industry and management control of losses. Chapter III examines the legal duties of the agency, the risk manager, and the driver(s); and agency liability and responsibility. Chapter IV discusses risk management objectives of concern to various agencies. In chapter V, the identification of risk areas to be managed is addressed. Chapter VI focuses on measuring the potential impact of a loss due to a risk. Chapter VII identifies various strategies that can be used to eliminate, assume, or transfer a risk. Chapter VIII provides information to make the risk manager an effective procurer of insurance for human service agencies. Provision for evaluation and feedback of risk management programs is discussed in chapter IX. Appendixes include information on a safety meeting; an accident review form; a request for insurance quote; and sample agency, driver, volunteer, vehicle, passenger, safety program, and supervision program profiles. (YLB)

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Training Manual for Human Service Risk Managers

Final Report
November 1983

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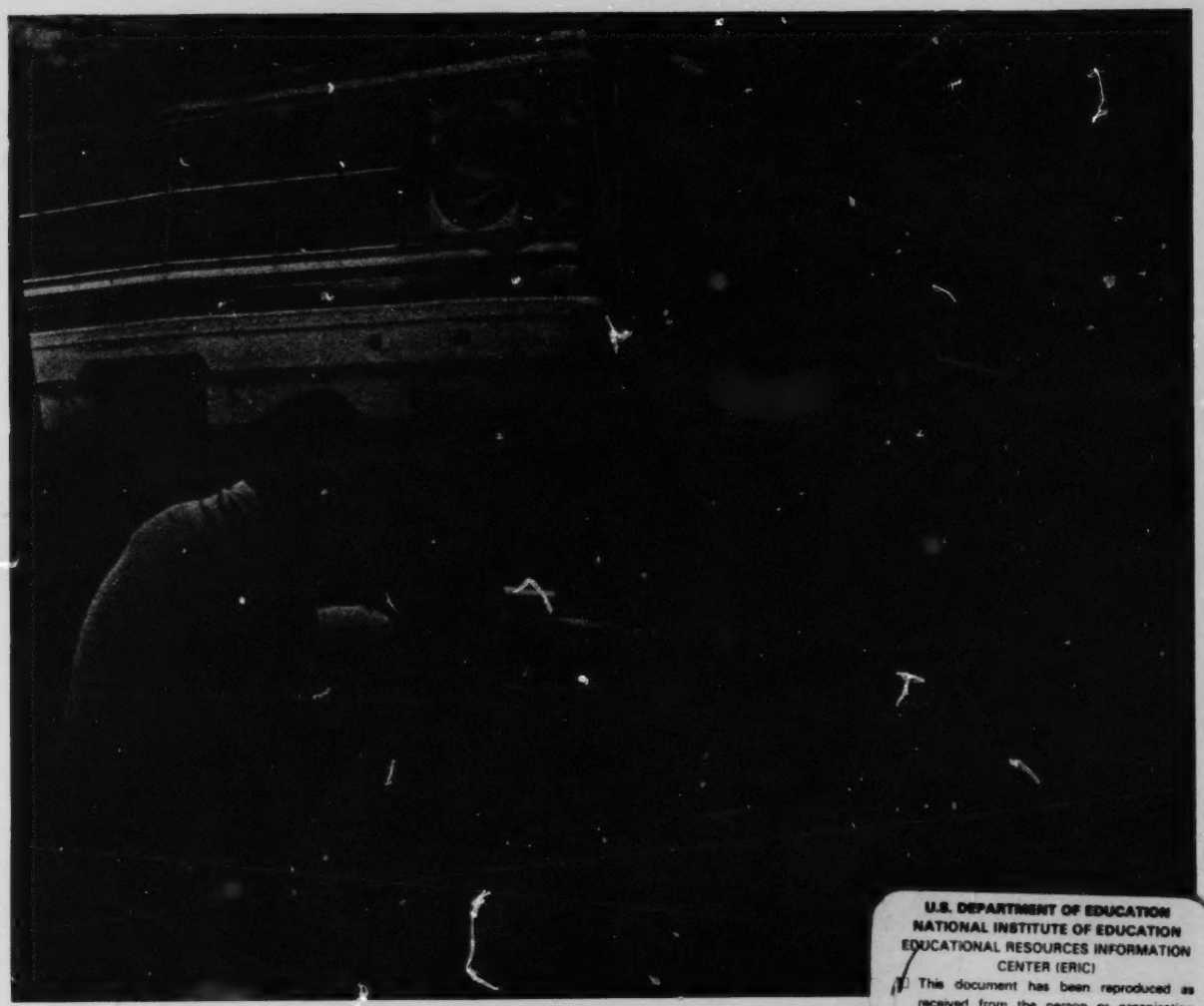

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On the cover, one of the vehicles of the Southeast Missouri Transportation Service (SMTS) receives a safety check. This photo was provided courtesy of Robert Oberman of SMTS.

Training Manual for Human Service Risk Managers

Final Report
November 1980

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FOREWORD

Human service agencies* do not desire to be in the insurance business, the transportation business or the risk management business. These agencies are primarily concerned with solving the problems facing our nation's human resources. Human service agencies are concerned about seeing that our nation's citizens receive the necessary nutrition, health care, education, physical or mental therapy or the adopted parents that they need. The only reason that the human service agencies became involved in transportation is because it is often necessary to take program beneficiaries to the services that the agencies provide or to take the services to the program beneficiaries' homes. For example, the Veterans Administration can have a public health nurse or doctor visit a veteran at home or it can help the veteran obtain transportation to the local Veterans Administration clinic or hospital. Likewise, the senior citizens' nutrition program can take meals to the elderly or take the elderly to a senior citizens' nutrition center to eat.

Whenever an agency becomes involved in transportation, the agency then becomes involved in risk management and insurance because transportation is inherently subject to the risk of accidents which may inflict bodily injury or accidental death upon either program beneficiary or the general public. This is especially true when agencies purchase vans and transport large loads

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*Human service agency is a term used in this report to define either of two types of organizations that are concerned with preserving and developing our nation's human assets. These groups include (1) social service agencies that are organized and supported with public funds and (2) charitable institutions (a legal term) which are supported by private contributions whether for the benefit of their own members (such as churches and YMCAs) or for the benefit of special groups (such as the Easter Seal Society, an orphanage, or the American Red Cross). Often such groups serve similar needs and similar, if not the same, groups; so for the purposes of this report, both groups are addressed collectively as human service agencies.

of physically handicapped, elderly, young or mentally handicapped individuals who are not able to use transportation vehicles in the conventional manner. The potential for injury is compounded if, for example, the vehicle stalls on a railroad track and the passengers are in wheelchairs and are unable to evacuate the vehicle. Another example is a vehicle that is stalled in cold weather with elderly passengers who are unable to remain warm. In other cases, the human service agencies may desire to use other transportation options such as volunteers, part-time employees or full-time staff who use their own private vehicles to transport the program beneficiaries. In still other cases, agencies may find it more beneficial to use contractors or vehicles owned by other agencies such as churches or community action agencies.

In the past the primary barrier to the use of these various transportation options has been the question of liability and insurance coverage. Unfortunately, many human service agencies were not familiar with either risk management procedures or the procurement of insurance. When they approached the insurance industry, the insurance industry was not familiar with all the efforts human service agencies wanted to do. In addition, the role human service agencies are filling is changing rapidly, and the laws that traditionally protected human service agencies from liability suits are rapidly being overturned.

This lack of experience on the part of both the agency and the insurance industry, as well as the rapidly changing legal environment under which the human service agencies and the insurance industry operate, created a great gulf of uncertainty. In an effort to reduce this uncertainty, the insurance industry developed rules and procedures which they perceived to reduce uncertainty. In many cases these rules do not fit the human service situation. In

other cases, there was a wide variation in rates depending upon the assumptions the insurance underwriter made in regard to the way the program was operated. In other cases, the insurance underwriter or the agency were simply unwilling to assume the risk they perceived.

Many agencies felt that the insurance problems would go away if the insurance industry was forced to provide coverage at low rates. They did not realize that insurance does not reduce risk but only spreads the financial consequences of large catastrophic losses. The insurance process allows an organization to budget a predetermined amount each year for protection from an occasional large loss. This process is relatively expensive with approximately 64 percent of the premium being used to pay for the losses and 36 percent being used for overhead including sales expense, billing, accounting, underwriting and statistical research. The only true solution to the human service risk problem is a risk management program which focuses on accident avoidance, decreased litigation and alternative methods for coping with the losses that do occur. Insurance is only one method of coping with the unavoidable losses. This manual is designed to educate human service agency management about basic risk management principles. Those individuals who view insurance only as a legal requirement that must be met before vehicles can be operated legally on the highway may become as impatient as the casual bridge player who wants to play without the bother of learning the rules of the game. More enlightened human service risk managers, however, will realize that accidental death and injury are caused by the way agency managers select and train drivers, maintain vehicles, conduct accident reviews, hold safety meetings and select and equip vehicles. In addition, the cost of accidents is affected by the rapport between the transportation staff and the passengers

who may be injured and the way managers coordinate insurance payments with public benefit programs such as Medicaid, Developmental Disability Programs and Veterans Administration benefits. Likewise, there are many different methods of handling the financial consequences of accidents of which insurance is only one technique. Lastly the cost of insurance coverage can be managed by reducing the amount of uncertainty with which the underwriter is required to view the agency's insurance application. Thus, risk management is truly an important management function which not only can prevent injury and accidental death to the passengers, but also can reduce the cost of these injuries and create many new transportation options for human service agencies. It is an essential area which human service agency managers must understand.

This manual and its companion documents should give the reader a good understanding of basic risk management and insurance issues.

1. Driver Selection and Training for Human Service Agencies. This manual describes those factors that should be considered in selecting and training drivers for human service agency programs available from The Office of Human Development Services.

2. New Insurance Programs for Human Service Transportation Providers, Technical Advisory No. 1, Washington, D.C.: U.S. Department of Health, Education and Welfare, August 1979. This manual describes the new insurance programs developed by the insurance industry and explains how human service agencies can use these new insurance programs.

3. The Social Service Insurance Dilemma: Problems, Analysis and Proposed Solutions, Washington, D.C.: U.S. Department of Transportation, March 1979. This report defines the human service insurance problem and was the report that originally scoped the problem so that a work plan could be developed.

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CHAPTER I

LEGAL AND HUMANITARIAN OBLIGATIONS OF HUMAN SERVICE AGENCIES INVOLVED IN TRANSPORTING CLIENTS

Purpose: This chapter illustrates the liability factors which create the insurance and risk management needs. Since the legal liability is established by law, a summary of the relevant concepts are presented. In many cases, agencies could easily avoid legal responsibilities if it were not for the humanitarian obligation to serve the high risk passenger. Thus, this chapter presents the foundation upon which the entire legal and liability system is established.

Introduction

During the last decade, the structure of public transportation has changed drastically. No longer is public transportation considered to be only the public transit utility (city buses); it has been expanded to include the special services transportation network. The human service network includes volunteers who operate their own vehicles, human service agencies that operate vehicles using employee or volunteer drivers, contractors who provide services to the human service agencies and staff employees who transport program beneficiaries in their own vehicles. Human service agencies that provide transportation to clients include not only human service agencies that are funded primarily by public funds, but also charitable institutions which are funded primarily by private funds.*

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*Human service organizations are those organizations that have as their mission the provision of compassionate services needed by special target groups. Human service agencies consist of both social service agencies and charitable organizations. Social service agencies are publicly supported agencies which deliver a human service to their program beneficiaries. This may include Head Start programs, sheltered workshops, meals for the elderly or services on Indian reservations. Charitable organizations are nonprofit organizations supported largely by private donations and which deliver human services either to their members or to special groups. This would include a wide range of programs, from Boy Scouts to United Cerebral Palsy.

These organizations provide transportation not because they want to become transportation companies, but because the traditional transportation providers are unable to provide the special transportation services often needed by the elderly, handicapped, low income and other "transportation disadvantaged" populations. Agencies are forced to find or provide transportation so that their program beneficiaries can take advantage of the social programs which are the primary missions of the agencies. In general, these social programs are designed to meet the special needs of certain population groups. The primary concern of human service agencies is serving the special needs of the clients or program beneficiaries.

Obligation of the Agency to the Client

When human service agencies provide transportation to clients, they incur both a humanitarian and a legal obligation to protect the safety of the passenger and the general public. When transportation is provided, there will be accidents. The large number of vehicles on the road, mechanical failure, driver error or other causes all see to this. The accidents may result in bodily injury, accidental death or property damage not only to the passenger, but also to the driver, other motorists and pedestrians.

Under the law, the driver, the driver's employer and the vehicle owner are responsible for any accident they cause. The law is designed to force these groups (the driver, the owner and the employer) to act responsibly to ensure the safety of the passengers they transport. If they do not act responsibly, courts will require that they reimburse the injured for their injuries. Thus, the burden of the loss is placed on the causer of the accident rather than on the innocent victim.

In the case of the agency or organizational provider, the humanitarian obligation appears to be even greater than the legal obligation to the passenger. This is logical because in the case of the human service agency, the primary mission is one of humanitarian concern. The humanitarian obligation is:

1. To provide a human service and, if deemed necessary, to provide transportation so that the recipient of the human service can obtain access to that service;

2. To protect the safety of the passenger, the agency, the employees and volunteers who use or provide transportation for the agency; and

3. To make sure that all who are injured while participating in these programs receive reparation for their injuries.

Thus, the humanitarian obligation is based on individual client needs and supercedes the legal obligation of who is at fault, contributory negligence, avoiding activities that might create a risk and other maneuvers that might be used by an organization which does not have the humanitarian mission of providing human service programs to their clients.

(This manual is somewhat different from the traditional risk management manual in that it is designed not only to define carefully the agency's legal obligations and to present measures for handling the legal risks, but also suggests ways for controlling risks under the presumption that the humanitarian goals of the agency are the most important.)

The remainder of Chapter I describes how the courts decide who is responsible for paying the injured. A reader who is familiar with the legal system may go to Chapter II.

Negligence

Although the humanitarian obligation supercedes the legal obligation, understanding the agency's legal obligation is important in order to realize the potential for losses that exists when transportation is provided to the agency's clients. When there is an accident involving a human service agency vehicle and the accident results in losses, whether personal injuries or property damage, there will be an attempt to place responsibility for causing the accident (and the responsibility for reparation) either upon the driver of the agency vehicle (and, therefore, upon the agency) or upon any other vehicle involved. The basis for placing liability or responsibility for an accident will depend upon the legal concept of negligence. When one person (the driver, for example) causes injuries to another, although the person's actions were not intentional, the person can be held liable if the person was negligent. Under many circumstances, organizations (such as the employer) also can be held liable. The most common situation is having responsibility placed upon the employer of the negligent driver.

Negligence is a legal conclusion ordinarily based upon the presence of the elements set out in Figure I-1. Stated very simply, an individual or agency may be deemed to have been negligent:

1. When there is presence of legal duty or obligation to perform to a certain standard of conduct to protect others against unreasonable risk;

2. When there is a failure to perform to that standard (breach of duty);

3. When the failure to perform is so closely related to the resulting injury that it can be said to have caused it or to have been its "proximate cause;" and

4. When losses, whether personal injuries or property damage, result from the conduct.

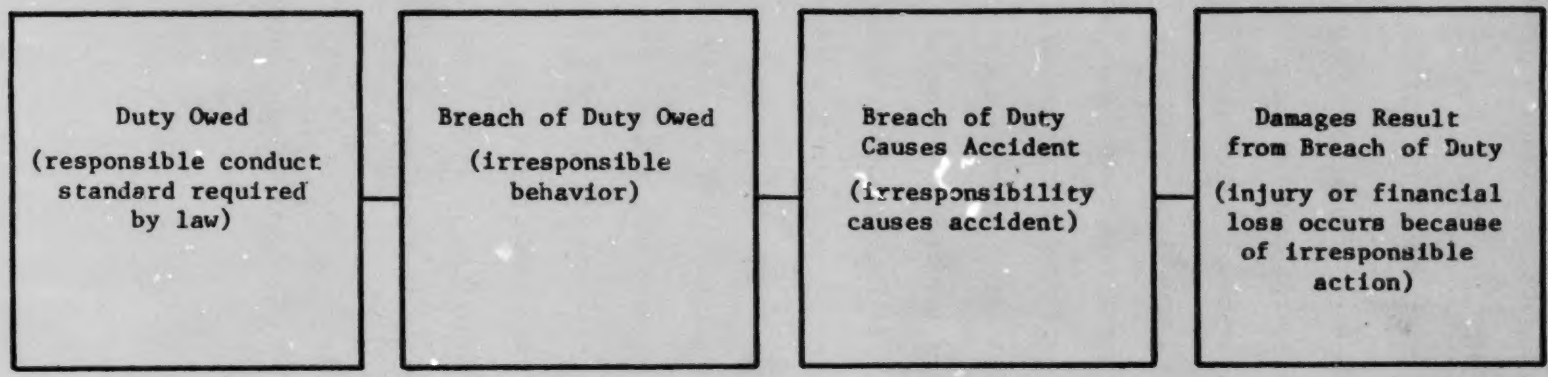
Duty Owed
(responsible conduct standard required by law)
Breach of Duty Owed
(irresponsible behavior)
Breach of Duty Causes Accident
(irresponsibility causes accident)
Damages Result from Breach of Duty
(injury or financial loss occurs because of irresponsible action)

FIGURE I-1

ELEMENTS OF NEGLIGENCE

If these elements are present in any given situation, a prima facie case of negligent conduct will be established. However, liability may not be imposed if the negligent party has valid defenses or if the right to sue has been removed by law.

Presence of Legal Duty. In general, a duty of care (level of responsible conduct) is imposed on all human activities. Specifically, drivers of automobiles or motor vehicles are held to a duty (responsibility) to exercise reasonable care against creating unreasonable risks of injuries to other persons. For example, they have a duty to maintain a careful lookout; they have a duty to maintain safe rates of speed; they have a duty to maintain a clear and safe distance between their vehicles and other vehicles they may be following; and they have a duty to keep their motor vehicles under control. Under some circumstances, a duty to exercise reasonable care can be modified. For example, one who offers to carry the general public in a motor vehicle for compensation is defined as a common carrier. The courts have imposed the "highest duty of care" upon common carriers for the safety of their passengers. On the other hand, many states have what are called "guest statutes" (which will be explained in more detail later) which may modify the duty of care owed to a gratuitous guest, such as a hitchhiker, by requiring the driver only to refrain from "gross or wanton and willful misconduct."

Breach of Duty. The importance of the degree of care required becomes more apparent when the second element of negligence is considered--breach of duty. Very generally, when a person's conduct falls short of that level of care required, a breach of duty has occurred. Ordinarily, proof of a breach of duty is a twofold process. First, it must be shown what, in fact, happened.

Second, it must be shown from these facts that the defendant acted unreasonably. Proof of breach of duty is a question for the "trier of facts" (the jury or, if a nonjury trial, the judge).

Causation. The third element of establishing negligence is establishing causation, that is, establishing whether the breach of duty (irresponsible action) caused the injury.

Damages. Damages are an essential element of an injured's prima facie case for negligence. Actual damages, either personal injuries or property damage, must be shown in a negligence action. If the irresponsible action caused no losses then there is no basis for recovery of losses.

The damages to be recovered depend upon the type of injury. In a personal injury case where the person actually was hurt physically, the courts hold that the injured is to be compensated for all damages (past, present and prospective), both specific and general. These damages include fair and adequate compensation for medical expenses and lost earnings, plus amounts for pain and suffering together with compensation for impaired future earning capacity. The courts also may allow an award for permanent disfigurement, mental anguish and inconvenience.

On the other hand, if property also has been damaged, the measure of damage depends upon the severity of damage. For example, the amount of property damage is the reasonable cost of repair. However, if the property has been almost or completely destroyed, the measure of damages is the fair market value at the time of the accident. Under most circumstances, there are certain items of damage that are nonrecoverable. For example, interest from the date of damage in personal injury accidents is not recoverable. Attorney fees are

not recoverable, and punitive damages (damages to punish the negligent party) are not recoverable unless the defendant's conduct has been grossly negligent (irresponsible).

Moreover, in all cases, the injured party has a duty to seek appropriate treatment to effect a cure or healing and to prevent aggravation of injury.

Defenses to Negligence

Contributory Negligence. Even if the four elements of negligence have been established, liability still will not be imposed if there exists a valid defense. Perhaps the defense most often utilized is the defense of contributory negligence. A brief example might be sufficient to demonstrate how this doctrine works. Figure I-2 is a diagram showing an accident occurring at an intersection. Vehicle 1 was proceeding through an intersection where there was a stop sign. Assume vehicle 1 failed to stop at the stop sign. Vehicle 2 did not have a stop sign at the intersection; therefore, vehicle 2 had the right of way. This would be a fairly clear-cut case of liability against vehicle 1.

However, assume further that vehicle 2 was exceeding the speed limit; therefore, the driver of vehicle 2 could be said to have been negligent also. The accident would not have taken place in all probability if vehicle 1 had stopped at the intersection, but the fact that vehicle 2 was exceeding the speed limit also would render the driver of vehicle 2 negligent. The doctrine of contributory negligence would say that the driver of vehicle 2 would not be allowed to recover any damages by virtue of the fact that the driver was contributorily negligent. This would be true even if the degree of negligence for the driver of vehicle 2 was much less than the negligence of the driver of vehicle 1.

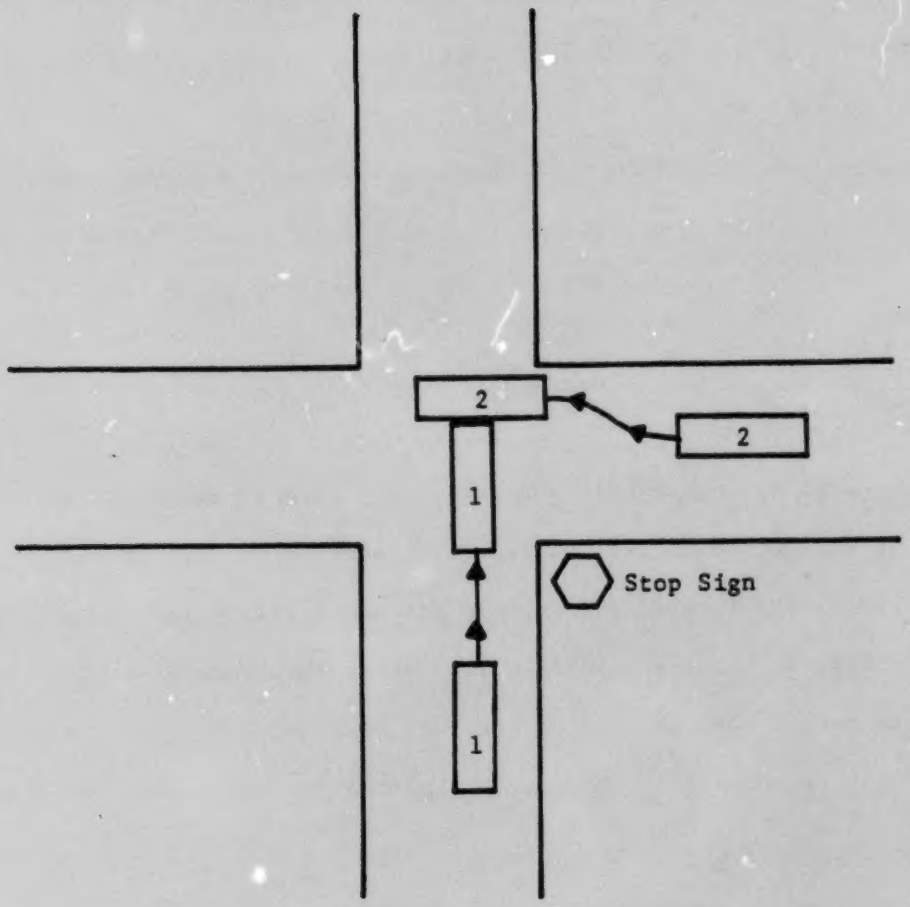

FIGURE I-2

DIAGRAM OF AN ACCIDENT

On the other hand, passengers in vehicle 2 would not be barred from recovering from the driver of vehicle 1 just because the driver of vehicle 2 was contributorily negligent. Contributory negligence has been modified in its effect in many states that have adopted comparative negligence statutes which would reduce the recovery of the contributorily negligent party by the percentage of negligence applicable to him. In this example, if the driver of vehicle 2 was found to be negligent by 25 percent, he would only recover 75 percent of his losses.

Historical Developments

The concept of negligence is a relatively recent phenomenon in the law. It began in the United States in 1850 as a result of a case in Massachusetts. The availability of liability insurance has had a significant impact upon the law of negligence, because traditional theories that have been utilized as defenses to reduce the standard of care are being abandoned by the courts. Several legal trends are becoming very important to human service agencies.

The Doctrine of Charitable Immunity. The doctrine of charitable immunity was first recognized by the courts of England and was introduced into the United States by the 1876 Massachusetts Supreme Court decision of McDonald v. Massachusetts General Hospital, 120 Mass. 432,21 A. Rep. 529 (1876). Since 1876, nearly all states have either accepted or rejected the doctrine. The doctrine, as adopted in the United States, held that charities were immune from suit for negligence under varying theories. For example, if a person who received a meal and a pair of shoes from the Salvation Army got sick from the food or blisters from the shoes, that person could not sue.

This doctrine was very popular during the early part of the 20th century; but in recent years the doctrine has lost its popularity with the courts for several reasons. One reason is that many charitable organizations, such as hospitals, have taken on the characteristics of regular commercial enterprises. More often than not, the existence of liability insurance removes the need for charities to have any form of immunity from suit. Additionally, courts recently have demonstrated a great reluctance to apply a doctrine that would result in an injured person being denied recovery.

The charitable immunity doctrine now has been rejected by a majority of courts or has been limited drastically in effect. In some states, the doctrine prevents the assets of a charity from being used to satisfy a judgment but does not provide any defense for or immunity from the suit. It has been stated that the reasons for the existence of the doctrine are no longer pressing and that the arguments in favor of charitable immunity are not persuasive. As a result, the charitable immunity doctrine has been abolished in a majority of jurisdictions previously recognizing it. The trend of abolishment of the doctrine of charitable immunity increases risk imposed upon private nonprofit agencies because they no longer have the protection from suit that they would have had when this doctrine was in force. Consequently, steps have had to be taken in order to protect the assets of the charitable organization. The purchase of liability insurance and the termination of many programs which involve a high degree of risks, like transportation programs, are examples of steps that have been undertaken.

Government Immunity. Arising out of common law, the doctrine of governmental immunity has strong support in history based upon the early concept

that "the king can do no wrong." As adopted in the United States, the concept is basically that states and the federal government cannot be sued unless they have consented to be sued. Mr. Justice Holmes in Kawananakoa v. Poly Blank (1907) 205 U.S. 349, 353 stated that:

> . . . a sovereign is exempted from suit not because of any formal conception or absolute theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.

Because the ability to sue the sovereign depends on concepts of consent, the federal government, various states and local municipal governments have enacted statutes which allow citizens to sue the government under specific rules and guidelines. Moreover, the concept of sovereign immunity has been reexamined in many states and, in many instances, has been repudiated. For example, as stated by the Illinois court in Molitor v. Kaneland Community Unit District No. 302, (1959) 18 Ill. 2d 11, 163 N.E. 2d 89:

> . . . we agree with the Supreme Court of Florida that in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that 'divine right of Kings' on which the theory is based.

The trend in the law is to allow a governmental agency or entity to be sued for the negligence of its employees arising out of the operation of a motor vehicle. The passage of these statutes was encouraged by the availability and use of liability insurance. Some court decisions held that, even if the government had not consented to being sued by virtue of passing a statute, the purchase of liability insurance implied a waiver of governmental immunity. See Vendell v. School District No. 26c, (1961) 360, p. 2d, 282.

The result of the trend to abolish governmental immunity has resulted in an increased risk of lawsuits being filed against governmental agencies. The

effect on human service agencies, if they are connected in some form or fashion with the government, is clear. They will no longer be able to rely upon the defense of governmental immunity, and need liability insurance to protect the assets of the agency from seizure where they are liable for an accident. As with the abolishment of the doctrine of charitable immunity, many agencies may cease to perform or provide services that entail risk.

Guest Statutes. At one point in time, a majority of states had statutes (or authoritative judicial decisions) that limited the liability of a driver of an automobile when the driver was carrying a gratuitous guest (hitchhiker or human service agency client). Ordinarily the driver of an automobile has a duty to exercise ordinary care to prevent injury to a passenger in the vehicle. These statutes (and judicial decisions) modify that duty (responsibility) to gratuitous passengers (individuals receiving a free ride when the driver does not benefit from giving the passenger a ride) by lowering the standard of care owed by the driver to that of slight care. The statutes vary in terms of the exact standard of care established. For example, some statutes make recovery in the event of an accident more difficult for the gratuitous guest. Thus, persons providing the transportation (staff members carrying passengers in their own vehicles or volunteers carrying clients) were protected from incurring liability if they provided gratuitous transportation. Under all statutes, the standard of care owed is correlated with status. For example, if the rider is determined to be a mere guest, then the driver is responsible for exercising only slight care. On the other hand, if the rider is deemed "an invitee," ordinary care is legally required. If a fare is paid, extreme care is required.

In recent years, there has been an increasing trend toward abolishing guest statutes. This trend began with the California Supreme Court decision

of Brown v. Merlo, (1973) 8 Cal. Rptr. 3d 855, 106 C.R. 388, 506 P.2d 312, which declared the California guest statute to be unconstitutional on the grounds that it was overly broad and that it violated equal protection of the law. Since the California Supreme Court decision in Brown, supra, guest statutes have been in a state of flux with some cases upholding the constitutionality of the guest statutes. However, there is no question but that the guest statutes, once so important in terms of protecting drivers (and employers) from liability, have been weakened. As the guest statutes are invalidated, the risk imposed on the human service providers of transportation increases. Consequently, the human service agencies must provide liability insurance, terminate the transportation services or contract for transportation services.

No-Fault Statutes. In recent years, many states have adopted no-fault statutes which allow the recovery of first-party insurance benefits without regard to fault (negligence). (The individual's own insurance policy will pay for losses rather than requiring court action against the at-fault party.) Usually, the statutes have a threshold level of damages below which no-fault benefits will apply. Over and above the threshold level, traditional negligence/fault concepts apply. For example, if a state has a $1,000 threshold and the injuries amounted to more than $1,000, no-fault would not apply. Some states do not put a dollar value on the threshold level; the threshold depends on concepts such as "permanent disfigurement." The impact of the no-fault statutes on human service vehicles is uncertain since some states treat "commercial" vehicles differently from private autos. Therefore, in states where human service transportation vehicles are considered to be commercial vehicles, full liability would fall on the human service vehicle.

Safety Regulations. In recent years, there has been an increasing trend of imposing safety regulations on vehicles, such as those carrying the handicapped. To the extent that special regulations exist, the regulations establish a duty of care owed. Consequently, failure to have the necessary equipment or trained drivers may result in a breach of duty. To the extent the breach of duty caused an accident which results in damages, the agencies providing the transportation will be liable. The trend of legislatively expanding the range of services that the agency must provide (such as the Section 504 regulations requiring service to the elderly and handicapped) increases the exposure to risk when providing this transportation. This is especially true for for-hire carriers, which are required to exercise the highest standard of care in serving those persons the carriers are required to serve.

Other Parties Having a Duty to the Passengers of Human Service Vehicles

Employers. Under certain circumstances, the employer of the vehicle driver will be liable along with the driver for damages resulting from the driver's negligence. This is the concept of respondeat superior, which states basically that the employer must stand liable for damages caused by the negligence of employees while the employees were acting within the scope of employment. This concept makes the agency liable for accidents caused by the fault of employees.

Vehicle's Owner/Lessor. The owner or lessor of a vehicle also may be held liable for damages if the vehicle was defective and if the owner or lessor was negligent in some form or fashion. Also, some states have statutes which require the owner of the vehicle to be liable if the negligent driver is using the vehicle with permission.

Maintenance Personnel. Those parties performing maintenance services on the vehicle may be liable for negligence in performing the duties with which they are entrusted. For example, assume that a mechanic was supposed to service the brakes on a vehicle, but was negligent, and the brakes failed, resulting in an accident. Both the mechanic and, on the basis of respondeat superior, the mechanic's employer would be liable if the brake failure caused an accident. On the other hand, if the mechanic correctly installed a part in the motor vehicle which later proved defective and an accident resulted, the distributor and manufacturer of the defective part may be liable under the doctrine of products liability. However, it must be shown that the defective part was a proximate cause of the accident.

Vehicle Supplier. Under many situations, the supplier and/or the manufacturer of a vehicle may be liable if the vehicle is in some way defective and if the defective condition results in an accident or an injury. For example, in recent years the manufacturer of one automobile has been sued because of a design which placed the gasoline tank in a position which increased the risk of serious injury to passengers in case of a rear-end collision.

Governmental Entities

Each time an individual performs a function, whether it be providing transportation, owning the vehicles providing the transportation, maintaining the vehicles supplying transportation, manufacturing the vehicles providing transportation, or performing any other activity related to it, the individual becomes liable to ensure that the function is performed in such a way as to avoid injury to the users of the service.

Under some situations, governmental entities may also be liable when there is an accident and the accident is caused, for example, by reason of defective conditions of the roadway or failure to maintain traffic control devices. The doctrine of governmental immunity, although substantially encoded, may still protect some governmental entities from liability suits.

Allocation of Losses for Negligence

Equally as important as legal defense against being held negligent is the question of who pays for the losses when there has been an accident.

The Collateral Sources Rule. The collateral sources rule allows a person who has been injured and who has received compensation from a source independent of the tortfeasor (negligent party) to obtain a second or even perhaps a third recovery for the same losses resulting from the accident. Damages which the court requires the tortfeasor to pay are not reduced by virtue of compensation paid from an independent source, such as hospitalization insurance. For instance, if a person is injured in an automobile accident in which another party is at fault and the injured person has personal medical insurance, the injured person can press suit against the at-fault party and be "reimbursed" by the tortfeasor's insurance for the cost of the hospital and doctor bills, despite the fact that the injured party's own insurance company has already fully covered these expenses. In effect, the injured party receives a windfall. One court discussed the rationale for this rule:

> If there must be a windfall, certainly it is more just that the injured party shall profit therefrom, rather than the wrongdoer shall be relieved of his full responsibility of wrongdoing. The best interests of society as well as the purposes of the parties are likely to be better served if the injured person benefits rather than the wrongdoer benefiting. Grayson V. Williams (C.A. 10 Wis.) 256 F. 2d 61.

For human services agencies government may be providing a series of benefits for the injured party (such as medicaid, medicare, veteran's benefits, disability insurance under the Social Security Administration and other gratuitous benefits) while at the same time it provides funding for transportation which, as a necessary component, must include liability insurance. The collateral sources rule can be extremely wasteful since the government may pay for the same injury more than one time.

Figure I-3 demonstrates how this concept arises. Assume that an automobile accident has occurred in which the human service vehicle driver was at fault and that the passengers are eligible for medicaid benefits. Consequently, the hospital bills that were incurred as a result of this accident would be paid in the first instance by medicaid. Once the extent and degree of injuries have been determined, the injured parties will attempt to negotiate a settlement with the insurance company providing liability insurance on the at-fault human service vehicle. A necessary component of this settlement would be a sufficient amount of money to pay the hospital bills, which already have been paid by medicaid. Additionally, payment may be made for permanent disability or disfigurement. The injured party may then be eligible for disability benefits from the Social Security Administration because of the permanent disabilities. Consequently, the injured parties may be paid by the government several times for the same injuries. Government paid for the medicaid benefits and paid for the insurance on the human service vehicle. The human service vehicle liability insurance is bound to increase as a result of making payment on this accident, and the government will have to pay for the increase.

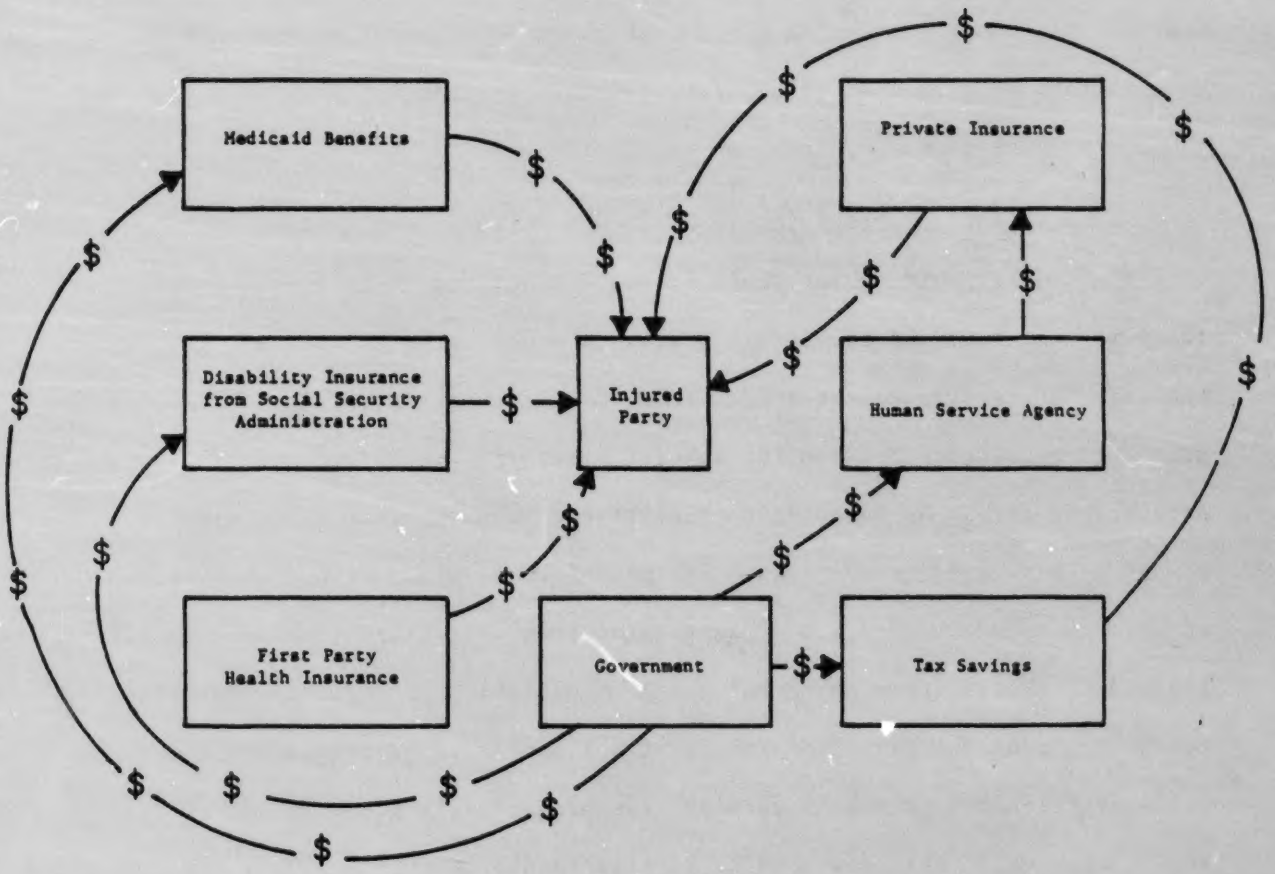

FIGURE I-3

COLLATERAL SOURCES

There have been an increasing number of exceptions to the collateral sources rule. For example, many no-fault statutes make government benefits primary. That is, government benefits will be paid before the no-fault benefits (which usually are provided by private insurance companies) will be available. An effective risk management program for human service agencies must address coordination of benefits, so that program beneficiaries will not be paid several times for the same accident.

Subrogation. Subrogation is a concept which allows an insurance company to pay its policyholders for their losses without regard to fault and then "to stand in the shoes" of the injured party in order to be reimbursed from any eventual tort settlement or reward from the guilty party. This concept may be a matter of contract between the injured party and the injured party's insurance carrier, or it may be based upon principles of equity. The basic concept allows an insurance company which has paid for an injury to be reimbursed out of the proceeds of a lawsuit or settlement from the at-fault party. If subrogation is in effect, then there will be no duplication of recovery because the insurance companies paying in the first instance will be reimbursed. The collateral sources rule is important if subrogation is going to be effective, and it is a major argument used to justify retaining it. However, the presence of the right of subrogation is usually the exception and not the rule. If governmental benefits are involved, human service agencies should be aware of the possibility of subrogation rights exercised by government. Usually, if Veteran's Administration benefits or medicaid benefits are involved, the agency should be particularly concerned. Although the rules governing subrogate and collateral sources are slightly different in each state, the same general principles hold.

Summary

The human service agency has a humanitarian duty, which includes helping those who need access to human service programs; protecting the client, employees, volunteers and the general public from accident; and reimbursing the injured for their losses when an accident unfortunately does occur. It also has a legal duty. Legal duties can be reduced substantially by not providing transportation service, by developing strategies to avoid legal liability in case of an accident or by contracting for transportation and other services. Because these strategies conflict with the agency's humanitarian obligation, the agency is left with having to develop strategies to reduce risk through better management and to develop more effective mechanisms for handling uncontrollable financial losses. Thus, this report is designed to help a human service agency identify and evaluate its risks, to plan for more effective accident prevention programs, to coordinate its reparation procedures and, in essence, to lower the cost of providing essential transportation services.

CHAPTER II

RISK AND THE HUMAN SERVICE AGENCY

Purpose: This chapter presents the basic vocabulary and concepts used by risk managers. This information is fundamental language and concepts which the risk manager must understand in identifying and classifying risk factors.

The human service agency, like any other entity, faces a number of risks which might influence the successful achievement of its mission. Some of these risks come within the influence or control of the agency and thus can be managed--others cannot. Before a human service agency can develop a formalized risk management program, it is essential that risks be understood as to their nature, classification, manageability and significance with respect to potential loss. Furthermore, it is important that the agency understand that the same risk might be viewed quite differently by an insurance underwriter than by the human service agency management.

Risks Defined

Because the word risk means different things to different people, a definition is appropriate at the outset. Risk has been described as uncertainty concerning loss, but a more accurate definition is ". . . variations in outcomes that may occur over a specific period of time for a given situation."* It is the emphasis on variations (i.e., actual outcomes which differ significantly from those expected) which is fundamental to this concept of risk. Generally, the greater the variations, the greater the risk. Thus, to

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*Williams and Heins, Risk Management and Insurance, 3rd Edition, New York: McGraw-Hill, 1976, p.3.

the extent that the agency is uncertain as to the outcomes (or losses) that may arise out of its operation, the agency is subject to risk. For example, an individual trip may result in an eventful transportation of passengers or in a catastrophic accident involving accidental death or injury.

Whenever there are many possible outcomes to a particular set of circumstances and at least one of these outcomes is undesirable, risk is said to exist. Risk exists even though the agency may not be aware that undesirable outcomes are possible. Once the existence of risk is realized, attention may be directed to doing something about it, namely developing a risk management program.

As can be expected, a risk management program is justified only where the undesirable outcome is likely to result in a foreseeable financial loss.* Not all losses are subject to risk management treatment, however. As the general rule, unless nonfinancial losses (such as emotional or esthetic losses) can be valued monetarily, they are excluded from risk management treatment. It should be noted, however, that "pain and suffering" in connection with automobile bodily injuries regularly are given monetary value by civil courts, thus they represent a significant potential loss exposure to an agency in the operation of its motor vehicles.

Two extremes are worthy of notice in connection with potential losses due to risk. If the loss in value is intentional (that is, if the result is desired), it is not properly considered a risk because there is no uncertainty concerning the outcome. On the other hand, if the loss in value is certain to

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*Financial loss occurs in any situation that results in a reduction or disappearance of value due to a particular contingency. Although there is a risk that all passengers may suffer extensive embarrassment if three people happen to wear the same dress, there is no financial loss.

occur, it also does not entail any risk (uncertainty). For example, depreciation in the value of the vehicle is certain and is taken into account year by year as a definite and predictable loss, thus involving no risk. Finally, if a particular loss cannot occur, there is no risk. (If the agency provides no transportation, then there is no transportation risk.)

In risk management, as in other technical areas, terminology often represents a source of confusion. Terms are often used carelessly (and incorrectly) in speaking of risk. To avoid confusion, several terms are defined below and are put into their proper perspective.

Peril. A peril is the actual cause of the loss, e.g., an automobile accident or a fire. It is what sets in motion the chain of events which ultimately results in financial loss, but it is not the risk itself.

Chance of Loss. Chance of loss has to do with the probability that perils will occur which may result in situations leading to loss. Knowing the chance of loss is important in measuring risk. The chance of loss is measured as the proportion of total outcomes (over a stated period of time) which result in a particular outcome (loss).

Unfortunately the chance of financial loss from various activities facing a human service agency is not easy to measure before an accident occurs. Moreover, even where efforts are made to measure the probability of various risks, the validity of the probability estimate is influenced by subjectivity. Even though insurance underwriters may have statistical and empirical information about human service transportation losses, they may modify their evaluations of the chance of losses for particular programs which they subjectively

feel are more risky. What people think might happen is often much more significant in determining attitudes toward risk than what the "numbers" may indicate based upon previous experience or loss history. It is this subjective aspect of risk appraisal which can create wide differences in insurance rates or an agency's decision to self-insure. From a risk management point of view, this kind of subjectivity leads to incorrect estimates of risk and hence inappropriate actions in dealing with actual risks.

Hazard. Another term which is often confused with risk but that has a precise meaning of its own is hazard. A hazard is a condition or situation that creates a potential loss or increases the likelihood of a loss occurring from a particular peril. Hazards generally are classified as physical, moral or morale hazards.

A physical hazard refers to the physical conditions which exist as a potential source of loss. For example, a worn or damaged tire on a vehicle and poor vehicle maintenance represent hazards which increase the likelihood of vehicle accidents. Similarly, special hazards prevail where elderly or disabled people are transported by human service agencies because they are more fragile and subject to falls or injury. These hazards might best be dealt with through properly securing these high-risk clients within the vehicle in order to anticipate and prevent injury losses.

A moral hazard, on the other hand, refers to the personal or subjective characteristics of individuals which may increase the probability of a loss. Dishonest employees or untrainable drivers, whose personal characteristics increase the probability of loss, are two such hazards.

Closely allied to this but somewhat different is the notion of morale hazard. This also is based on personal characteristics which increase the

likelihood of a loss. Morale hazards include such things as indifference or irresponsibility concerning valuable property or fragile passengers. A driver who is careless because he does not own the vehicle or an employee who takes undue chances because of the existence of insurance are good examples of this problem.

Uncertainty. The term uncertainty is used to refer to personal doubt concerning one's ability to predict outcomes. Even though a significant amount of statistical evidence about losses and their likelihood may have been amassed, not knowing how these might apply creates a conscious awareness of risk which may be frustrating and even debilitating. For example, a volunteer driver might be frustrated to the point of refusing to provide service because of uncertainty about available insurance coverage.

Classification Schemes for Risk

Before any effort can be made to apply modern risk management techniques to agency risks, it is essential to classify the risks which are prevalent and to determine which are amenable to a risk management program. Distinctions are made between speculative and pure risks; personal, property and liability risks; and manageable and unmanageable risks.

Speculative Risk. A speculative risk is one in which there exist the possibilities of both loss or gain, i.e., success or failure. This is generally known as a gambling risk. With respect to the human service agency operation, speculative risk would be found in the question of whether or not the agency will be successful in the accomplishment of its mission. Any time a chance of success or failure exists, a speculative risk exists. Generally, this type of risk is not suitable for the application of the insurance technique since any organization has speculative risk. This is true because the

final outcome (loss or gain) may well be within the control of agency management and/or may be effected by innumerable external forces within society itself.

Pure Risks. On the other hand pure risks are found in any situation in which there is a chance of loss (injury) but no chance of gain. Generally speaking, pure risk is not voluntarily sought but arises out of operations or activities which are performed for a purpose unrelated to the risk itself. Pure risks generally lend themselves well to such risk management techniques as insurance or loss prevention programs. Pure risks can arise from a variety of activities which are inherent in the operation of any human service agency.

Bodily injury, sickness, death and disability (lost wages) are personal risks which always are present in any operation where people are invovled. From the point of view of the agency's mission and its humanitarian obligations, these are generally the most serious risks.

Property owned by or used in the operation of the agency is subject to physical loss or damage such as fire, collision or vandalism. This represents a second source of pure risk. Again risk management techniques such as transfer (through insurance) or loss prevention are generally applicable.

Failure of Performance. Another category of risk, failure of performance on the part of others, is present in any operation, is difficult to predict and, therefore, is potentially a serious source of losses facing the agency. The classic example here is liability for bodily injury to clients or third parties caused by a driver's failure to exercise the required degree of care in an agency vehicle. Another example would be theft of funds by a dishonest employee or manager.

Unmanageable Risks. Another way to view risks has to do with management's ability to control the risk and the resulting financial losses. Those risks which are generally classified as unmanageable have to do with acts of nature or pure chance--events which are not amenable to traditional loss control techniques such as prevention, loss reduction or hazard reduction. Losses due to blizzards, hurricanes, snowstorms, changes in funding levels, and changing community acceptance of the programs often fall in these categories.

Manageable Risks. Manageable risks include that vast range of outcomes and events which may result in financial loss and which can be avoided or minimized if appropriate management action is taken. The term "manageable" implies that there exists a wide range of pure risks which may result in potential financial losses and which are amenable to a variety of risk management actions such as driver selection and training, improved agency management, insurance or adequate securement of passengers within the vehicle. It is in this latter area of manageable risks that the full impact of a sound risk management program has its greatest effect.

Risk Evaluation by the Insurance Industry

Insurance generally comes to mind first as a means of dealing with pure, manageable risks although it is not always the "best" solution. Although insurance is frequently sought, it is not always available or affordable, thus it represents a disparity between what an agency might desire as a risk management method and what the insurance industry might be willing to provide. This disparity and, hence, potential source of dissatisfaction and criticism arises all too often because of differences in appraisal or evaluation of a particular risk by the insurance industry and by the agency. At this point it may be

instructive to consider how an insurance underwriter (risk evaluator) might view some of the traditional risks associated with human service agency transportation.

Conceptually it is the responsibility of the underwriter to accept only those risks which conform to the risk characteristics inherent in the underwriting rules and guidelines under which he operates and to reject those risks which do not conform. The overall objective is to assign risks to reasonably homogeneous classifications and to monitor statistically loss patterns or ratios which closely conform to those predicted for the reasonably homogeneous classes of risks accepted. Thus, if the underwriter accepts risks that are essentially similar and charges the premium statistically required to cover the projected losses (and necessary overhead), the continued operation of the insurance company and its ultimate profitability can be assured. The job of the underwriter then begins with evaluation and measurement of loss potential based upon historical loss experience where it exists or with estimates of future loss based upon what is best described as underwriting "judgment." The quality of the agency management, driver selection and training program and employee morale are excellent predictors to the underwriter for evaluating a particular transportation risk. A high driver turnover rate, for example, indicates poor driver morale and is a good predictor that the agency is so desperate for drivers that it will overlook selection criteria and probably feels that it cannot afford proper training. Unless the agency can explain another logic for a high turnover, the underwriter will be concerned.

A potential problem exists in attempting to classify risks when the existing classification system is not appropriate to the risk. A new risk, such as the human service agency transportation risk, might not fit into any

existing category. Therefore, it may be subject to potential misclassification with resulting over- or undercharging for the actual risk potential. This explains why it was necessary to get new classifications for various human service agency programs including volunteers, part-time employees and agency-owned vehicles with employee and volunteer drivers. For a complete discussion see New Insurance Programs for Human Service Agencies: Technical Advisory No. 1. In the final analysis, the insurance company must charge an adequate premium to cover all expected losses, expenses associated with the payment of these losses, overhead and a reasonable profit for the company. Predicting loss ratios is fundamental to successful insurance rating, and the necessary placement of risks in their proper classification is fundamental if the insurance company is to stay in business.

To obtain a reasonable evaluation and to accurately measure potential loss, the insurance industry uses a variety of sources of information including data supplied by the potential insured in an application. The more accurate and detailed such information, the less subjective the evaluation of the risk and the more accurately the insurance underwriter can predict the real cost of providing protection.* The insurance agent also is a vital source of information about the risk because the agent is usually available at the local level to appraise and to observe what is involved in the agency's operations. One of the most important functions of the insurance agent is to convince the insurance underwriter that the applicant is actually a much better risk than others that would normally fit into the same group.

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*Chapter VIII provides a form to use in providing the information needed by the insurance underwriter to evaluate the human service risk.

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Insurance companies also resort to collateral investigative techniques to determine risk characteristics. These may involve examination of operating records, on-site inspection of maintenance, review of driver records and inspection of vehicles. Because these data are vital to the evaluation process, there is a need for accumulation and availability of such vital information at the human service agency level in order to assist the insurance underwriter in making an appropriate evaluation of the agency's risk.

Insurance companies also resort to statistical rating bureaus which are central clearinghouses of industry-wide statistical data and loss experience. The Insurance Services Office in New York is one of the largest of these statistical rating bureaus and is charged with the responsibility for the determination of the classification systems and underwriting guidelines to assist member companies in proper evaluation and establishment of premium charges. This centralized accumulation and analysis of data provides a means whereby precise evaluation and underwriting of risks is facilitated.

Whenever the insurance industry is asked to insure a new risk or category of risks, the industry applies a general set of guidelines known as the requirements of an insurable risk. First, it is obvious that not all risks can be insured. Thus, wisdom dictates that only those risks which conform reasonably well to the requirements of being insurable can be considered for insurance.

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*Most insurance companies work primarily with large groups of homogeneous risks. However, a few companies, such as Lloyd's will insure one-of-a-kind risks, such as a singer's voice or a football player's legs; but the premium is very large to take care of the large cost of underwriting and the extensive uncertainty of the risk.

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In order for any particular risk to be insurable, it must be part of a large number of reasonably homogeneous or classifiable exposure units. The large number of human service transportation programs provided by human service agencies meets the "large number" requirement, although the various programs may not always be homogeneous.

Size and nature of the potential losses must be definite, that is, difficult to counterfeit (to fake injury and treatment cost) in time and place. The human service vehicle accident risk and its corresponding financial losses appear to conform to this requirement.

The losses must be accidental, that is, beyond the control of the insured and not certain to occur. The insurance company cannot insure intentional acts such as arson or self-inflicted bodily injury. With respect to human service agency transportation, it should be obvious that management's control of losses through safety programs, including proper driver selection and training, would be significant in conforming losses to the accidental requirement.

It is also essential that an insurable risk be large--that it be of such significant economic consequence that it cannot be borne easily by the human service agency. Clearly the liability exposure for losses arising out of negligent operations of the vehicle is such a potential loss. On the other hand, deductibles frequently are used to reduce from overall loss experience, and hence from premium cost, of those losses which are relatively common and of low dollar value such as paint scratches and small "fender benders" which invariably occur in parking lots. The deductible or retention of these small risks is the most practical means of dealing with these low value losses. This is beneficial for the human service agency because the additional premium

must pay for the cost of the claim, the overhead of settling the claim, and the administration of the insurance process.

The cost of providing the insurance must be economically feasible, that is, it must be sold to the potential insured at a price which is reasonable and affordable. If the potential loss is so large that high insurance premiums make the coverage unattractive or unaffordable, then insurance is not feasible because it has priced itself out of the market. This was the problem encountered when the first nuclear power plants wanted to buy liability insurance to cover potential law suits in case of a leakage or malfunction.

The chance of loss also must be calculable, that is, subject to statistical analysis upon which the insurance company can rely in establishing its estimate of expected losses as a proper basis for setting rates. The insurance industry requires that it have full and complete data on 1,069 accidents before its statistics are considered valid.*

Finally, the risk should be free of catastrophic exposure, that is, it should not be likely that a great number of risk items (agencies or vehicles) will occur losses at the same time. The insurance industry does not want to have all its risks or even a substantial portion of them concentrated to one particular geographic area, such as hurricane exposure in Key West, Florida. The key here is diversification of risks to prevent any one company from incurring an inordinate amount of loss with one particular occurrence.

In attempting to apply these insurability characteristics to determine the acceptability of a risk, the underwriter must seek to avoid any element of

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*Since 3 8 percent of the accidents represented 48.6 percent of the dollar losses, it is necessary to make sure that catastrophic accidents are adequately included. See the discussion in Chapter VI.

adverse selection. Adverse selection is the tendency of those having a greater than average probability of incurring losses to seek insurance. For example, a truck line with a good risk management program may self-insure while one with a very poor accident record will be quick to insure. This, of course, is a judgment factor which again relates to the insurance company's evaluation of the risk and the quality of agency management. Once insurance is offered, the company is saddled with having to pay for losses resulting from poor agency management which results in increased potential for losses. On the other hand, the underwriter may feel the agency has good management which increases the quality of the risk and, therefore, might encourage the insurance company to extend insurance protection at a lower more competitive rate. Typically, the premium pricing policy is to accept a risk and then to provide incentives for management to improve its risk management activities. Generally, insurance pricing relies on what is generally called "education through the pocketbook." Poorly managed programs pay high rates. This provides an incentive to improve risk management techniques. Therefore, each time the agency procures insurance, the agency should try to convince the insuror that it has implemented risk management steps to justify lower rates. If the agency's program is all talk, however, and if it does not reduce accidents, the company probably will not be impressed the next time the agency brags of its efforts.

Management Control of Losses

Because insurance costs will be influenced by loss experience in the long run, it might be well to consider ways in which human service agency management might influence or control losses in the interest of reducing those costs. On the assumption that human service agency management influence over losses could result in lower premiums, it would seem advisable that one individual

within the agency be given responsibility for those activities or programs which would be likely to minimize the financial impact of losses. Included in the responsibilities of this employee should be the following:

1. The direction and coordination of overall loss control activity, such as safety practices, driver selection and training, vehicle maintenance; contracting procedures, volunteer management and recruiting program;

2. The provision of specific guidelines and procedures for implementation of the loss control program by management, employees, volunteers and contractors;

3. The monitoring of all departments and operations to see that the basic procedures and guidelines are being followed and are appropriate, including a formalized program of written and oral feedback from persons involved at the day-to-day operations level;

4. The investigation of all serious accidents and a written report filed concerning the nature of the cause, results and any indications of supervisory problems leading to the accident;

5. The development of a formalized system of accident and injury reports implemented and maintained for the purpose of statistical analysis, improved safety and managerial programs and dissemination to insurance agents for future use in setting or modifying premium charges; and

6. The promotion of safety consciousness through safety meetings, literature, bulletins and other safety-oriented activities in the interest of control and reduction of potential losses and their financial impact.*

In general, the insurance underwriter will look for indications of management's attitude toward safety and loss control and management's ability to

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*Just as an agency can benefit from having an attorney review its legal documents and a CPA review its financial reports, the agency will benefit by having a risk manager review its operations to prevent accidents. Preventive law, preventive accounting and preventive risk management are far superior to crisis management. In small agencies, the agency manager may perform this function, or the local government may offer a specialist who can assist many different agencies.

manage hazards in the day-to-day operations of the agency. Therefore, it is both practical and ultimately economical for the agency to cooperate with the insurance industry in the accumulation and dissemination of information and experience which would be helpful in risk evaluation and measurement. It also is financially beneficial for the agency to maintain a strong program of loss control in the interest of reducing the actual occurrence of losses as well as reducing its insurance costs.

In summary, whenever unaffordable insurance rates or unavailability of insurance are encountered, it is an indication that the underwriter feels that the agency has an unusually high risk program with a lack of proper loss control activity at the agency management level. When this occurs, two situations may exist:

1. The underwriter does not understand the risk and has either placed the risk in the wrong classification or is concerned about the uncertainty of the risk.

2. The agency does not understand effective risk management and is not managing the program to prevent needless accidents, injuries and financial losses.

CHAPTER III

RISKS INHERENT IN PROVIDING TRANSPORTATION

Purpose: This chapter examines the legal duty of the agency, the risk manager and the driver(s) participating in human service programs since the risk of liability suit (and thus financial loss) occurs when one of these groups is negligent in performing their legal duty.

A passenger transportation program is perhaps one of the greatest risks that a human service delivery agency will encounter. Property damage, hospital and medical costs, wage and future earnings losses, and general and punitive damages may be incurred in the split second it takes for a traffic accident to happen. An accident can occur during transit, while passengers are boarding or exiting the vehicle and/or while passengers are being assisted from home to vehicle.

There is the potential for very large losses because the average number of passengers per human service vehicle is relatively high compared to the national average of 1.5 persons per private vehicle. Large loss accidents, while infrequent, compose a large percentage of the total dollar losses. For example, only 1.6 percent of all bodily injury claims under private automobile insurance policies were for $10,000 or more, yet they accounted for 19.5 percent of the total dollars of insurance payments. Sixty-eight percent of all accidents are for losses of $500 or less; these accidents account for only 14 percent of total claim payments.*

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*All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 49.

The property damage loss is small in comparison to bodily injury losses. On the average, property damage loss equals only about 17 percent of bodily injury claims.*

The legal system does not encourage victims of a traffic accident to be responsible for their own losses but encourages them to look at the at-fault party to pay for all of the damages. The total loss to a human service agency can be very large, especially when many passengers are involved, so agencies depend on high limit insurance to protect themselves and their passengers in case of catastrophic losses.

Agency liability can occur in many ways. Human service delivery organizations, their boards and their administrators have a legal duty to those they serve and to the general public. This duty, if not performed responsibly, can make them liable for any losses which occur.

Duty of Agency

Board members, administrators and supervisors are subject to potential liability both for decisions made and possibly for the failure to make a decision. Board members and administrators of human service agencies have a duty to:

1. Select and train a manager who will operate the organization in a manner to ensure the safety of the program beneficiaries;
2. Provide equipment that is in good operating condition;
3. Make sure that all drivers and escorts are trained properly;
4. Discharge known incompetent employees or place them in areas where they will not cause injury;

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*Insurance Facts, 1978 Edition, New York: Insurance Information Institute, 1978, p. 51.

5. Select drivers who are physically fit to drive without subjecting passengers to undue risk;

6. Select drivers who are emotionally fit to drive without subjecting passengers to undue risk; and

7. Provide proper maintenance procedures, facilities and funds to keep vehicles in a safe condition.

Duty of Manager

The agency manager and staff members have a duty to supervise adequately the agency's program. This implies that they are liable for failure to ensure that transportation services are provided in a reasonably safe manner. To avoid liability, agencies are required to have (1) drivers (volunteers, employees or contractors) who are carefully selected, adequately trained and supervised, (2) vehicles with proper safety equipment and which are maintained properly, and (3) due care in the operation of transportation programs.

Duty of the Driver

The driver has a duty to passengers (including program beneficiaries being assisted outside the vehicle) and to the general public. To fulfill this duty to the passengers, the driver must use safe procedures to load and unload passengers. Passengers should be required to use seat belts, child restraint devices, wheelchair tie-downs or other restraining devices in order to be protected properly in case of an accident or sudden stop.

A restraining device will increase the chances of a person surviving a collision by 40 percent.*

> In a recent accident involving a human service agency, two people were killed, and a 23 year old has become a paraplegic. Although the accident was relatively unsevere, the

*National Highway Traffic Safety Administration, Fatal Accident Reporting System, Washington, D.C.: U.S. Department of Transportation, 1977, p. 41.

passengers were not secured properly in the vehicle. The The two fatalities had been sitting on folding chairs. The 23 year old was sitting on an "overturned 5 gallon bucket." Not wanting to lose seating capacity in vehicles designed with wheelchair spaces, some human service agencies have used temporary seating when wheelchair passengers are not being transported. This practice can be deadly.

The driver also should see that loose objects (such as pop bottles, groceries, canes and crutches) in the vehicle are secured. The driver should inspect the vehicle for any mechanical or other problems before its use. This inspection should ensure that safety equipment is aboard and in good condition. The driver is responsible for driving the vehicle so as to avoid any preventable accident. Finally, in case of an emergency, the driver should know how to assist and/or to obtain assistance to protect the passengers from further injury. The driver's duty to the passengers includes performing any action that a responsible person would be expected to perform in order to prevent harm occurring to the passengers. However, the driver's duty will be governed by the "reasonable person" standard. The driver must at all times exercise due care.*

When providing assistance to clients outside of the vehicle, the driver or attendant has a duty to provide proper assistance to those individuals with special needs so that the program beneficiaries can adapt to the vehicle and service that is being provided. The driver/attendant has a legal duty to recognize the special needs of all individual program beneficiaries whom the agency offers to serve. (If an agency indicates that it does not haul children

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*As shown in Chapter I due care is extreme care for a common carrier such as a transit authority or taxi, slight care for a volunteer and ordinary care for an agency.

or nonambulatory passengers, then it does not have a duty to know how to serve their special needs.) If the agency "holds itself out" (offers) to serve them, then the driver must be able to recognize their special needs and to respond in a way to prevent injury. (The recent 504 regulations have made some agencies legally responsible for serving groups that they had not previously offered to serve.) Passenger assistance should be provided in a manner that will not injure or upset the passengers. The driver may be responsible for seeing that the clients' home furnishings and belongings are undisturbed (not damaged) and are secured (doors locked) when providing door-through-door service.* Also, the driver/attendant has a duty to be able to offer emergency assistance or to be able to obtain it in case of accident.

Finally, the driver has a duty to the general public to protect their lives and property by driving the vehicle in a reasonably safe manner, as do all drivers using the public roads and highways.

If an agency does its own maintenance, then it may be liable if it is negligent in repairing the vehicles. If this work is done by a garage, then the garage will partially assume this duty. The agency must show due care in selecting a garage.

Agency Liability and Responsibility

Risk of liability loss occurs when the agency and its employees have a duty, when they are negligent in carrying out their duty and when their negligence causes injury, death or property damage.

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*If the driver damages the door or overturns an antique vase in moving the passenger, the driver may be liable. If the passenger lives alone and the driver neglected to lock the door, there may be a claim for liability.

The human service agency has additional risk other than liability risk. It is subject to the loss of or damage to its vehicles not only when they are operating but also when they are garaged or parked during nonwork periods. Destructive forces of nature such as high winds, floods and lightning are uncontrollable ways by which a vehicle may be damaged while parked. Other causes of damage during these periods are controllable. A vehicle that is parked illegally and/or unsafely may be struck by another vehicle. A vehicle left with the keys inside may be stolen. A vehicle that is parked unattended in an unsecure location may be vandalized. Accidental or unintended physical damage to the agency's vehicle and equipment is a possibility during the operation of a transportation program. Care and security measures can reduce some of this type of loss.

Finally, the human service agency is subject to losses due to a failure to perform a duty to its own employees, whether full- or part-time, and to its volunteers. State law places absolute liability on an employer for work related injuries regardless of whether or not negligence is involved. Employers are required to carry worker's compensation insurance. In some states, volunteers are covered by worker's compensation. Worker's compensation usually pays all medical bills, provides disability and death benefits and provides a payment to the worker's spouse and children.

When a human service agency starts providing transportation to its program beneficiaries, it comes under state regulations which require that operators of vehicles on the public highways be financially responsible in case an accident occurs. The agency has a duty to meet these financial responsibility requirements.

States have constitutional power to control and regulate travel on public highways and to provide for the public safety by establishing reasonable regulations. In an effort to protect innocent victims of accidents from drivers of motor vehicles who do not have liability insurance, most states have enacted either compulsory insurance laws or financial responsibility laws. These laws are very different in each state.

The compulsory insurance statutes require the purchase of automobile liability insurance. These statutes generally are considered to be remedial statutes, that is, they were passed by legislatures in order to remedy previously existing defects in laws. Prior to the operation of a motor vehicle in states with compulsory insurance statutes, the driver of a vehicle is required to have liability insurance in force. Some states allow the driver of the motor vehicle to post a bond, to provide evidence of self-insurance or even to post cash. In these states, failure to have liability insurance or an authorized substitute in force at all times generally is punishable as a misdemeanor. Moreover, failure to have the insurance or the substitute may result in the termination of driving privileges. Thus, liability insurance or the substitute is to be in force before the accident.

Other states have passed financial responsibility laws in lieu of compulsory insurance laws. Financial responsibility laws adopt a very different approach because these laws only come into effect after an accident. After an accident, these statutes generally require a report to be filed with the state motor vehicle department. After this report, the state motor vehicle department will send out letters to the driver or drivers involved in the accident requiring the posting of evidence of financial responsibility within a certain

number of days. The evidence of financial responsibility can be cash liability insurance, a bond or, in some instances, a release from the other party. Failure to post the evidence of financial responsibility within the specified time period will result in the revocation of driving privileges. Under most of these statutes, driving privileges will not be restored until either evidence of financial responsibility has been filed or a release from the other parties has been obtained and filed with the department of motor vehicles together with a liability policy. If a lawsuit results, and if a judgment is awarded against a driver who does not have insurance, the driver's driving privileges will not be restored as long as that debt remains outstanding. (A great defect found in this approach is the ability of a party to discharge a judgment in bankruptcy. Once the bankruptcy discharge has been obtained, driving privileges may be restored in some states, provided that the driver complies with the additional requirements, such as purchasing liability insurance).

CHAPTER IV

RISK MANAGEMENT OBJECTIVES

Purpose: When a risk management program is developed for a human service agency, it must be based on the objectives of the agency. This chapter discusses the various risk management objectives which may be of concern to various agencies.

A risk management program outlines positive daily actions which, if taken, either will avoid a future accident or will control the adverse effects of a future accident if it does occur. The consequences of an accident on an organization may be either great or small, depending on the perspective of the organization. For example, a collision which results in the loss of a vehicle for a period of two weeks while it is being repaired may be a tolerable situation for a large agency owning many vehicles, but it may be an untolerable situation for another agency owning only one or two vehicles. Therefore, an agency must determine the objectives of its risk management program. Risk management objectives detail the particular consequences of accidents which are the most important to control. They give guidance to an agency risk management program by defining what the program is trying to do for the agency. The following are some risk management objectives that may be used by human service delivery organizations. They give some idea of how the objectives of a risk management program can direct the effort to control the consequences of risk towards some areas and away from others.

Minimizing Financial Losses

A primary objective is to minimize financial losses due to an accident that is incurred by the agency. To minimize losses, the agency must plan, organize and direct activities to reduce the hazards inherent in providing

transportation. The sophistication of the program depends on the objectives set for the agency's risk management program. Minimizing all financial losses is a strategy which may be used by an agency which has little difficulty obtaining funds for budgeted items but has great difficulty getting funds for nonbudgeted items. By purchasing insurance for all losses, the cost of the insurance is known at the beginning of the budget year.

A contrasting strategy would be to insure only very large losses, thereby avoiding ruin, while accepting a certain level of noncatastrophic losses on the basis that the agency can self-insure or retain the risk at a lower cost than the cost of insurance. The specific risk management objectives will designate which strategy is to be pursued.

Minimizing Losses to the Clients

Another objective is to minimize losses to the agency's clients. Losses to clients include medical expenses, lost wages and property damage, plus general injury-related losses such as pain and suffering which are difficult to value monetarily. If the agency is only concerned about minimizing its own losses, it may not worry about what happens to program beneficiaries if they are involved in an accident where another vehicle is at fault. Because 14.6 percent of the vehicles on the highway have no insurance whatsoever and another 12.3 percent have minimum coverage (see Table IV-1), it is very possible that the other vehicle will not have adequate insurance to compensate the passengers in the agency's vehicle. If the agency is concerned about minimizing losses to its passengers, the agency will need to focus on protecting the losses of its program beneficiaries not only when the agency vehicle is at fault but also when another vehicle is at fault and has inadequate insurance.

TABLE IV-1

DISTRIBUTION OF INSURANCE COVERAGE ON U.S. VEHICLES

Private Automobile

Coverage	Percent of Vehicles	Cumulative Percent	Average Coverage Per Person if 10 People in Vehicles
No insurance	18.3	18.3	0
10/20	14.5	32.8	2,000
15/30	7.6	40.4	3,000
20/40	2.5	42.9	4,000
25/50	17.2	60.1	5,000
50/100	14.9	75.0	10,000
100/200	1.9	76.9	20,000
100/300	19.7	96.6	30,000
over 100/300	3.5	101.1*	over 30,000

All Vehicles (including Commercial Vehicles)

Coverage	Percent of Private Vehicles	Percent of Commercial Vehicles	Percent of Total Vehicles	Cumulative Percent
No insurance	18.3		14.6	14.6
10/20	14.5	3.5	12.3	26.9
15/30	7.6	1.7	6.4	33.3
20/40	2.5	.9	2.2	35.5
25/50	17.2	5.8	15.0	50.5
50/100	14.9	9.3	13.8	64.3
100/200	1.9	.2	1.5	65.8
100/300	19.7	48.0	25.4	91.2
over 100/300	3.5	30.0	8.8	100.0

*Rounding error made total greater than 100.

Source: Insurance Services Office, 1977

Maximizing Agency Effectiveness

Still another objective is to maximize the agency's effectiveness. An accident or other undesired event may cause a disruption in the operation of the agency and interfere with its ability to deliver service. Reducing the time of disrupted transportation service may be an important objective of risk management. If a vehicle is in the repair shop or if a driver is unable to drive due to injuries, transportation service is restricted unless a backup system has been provided. Also, if a backup system is not planned but is fashioned by whatever means is available at the time following the accident, its cost is likely to be significantly greater than the cost of the normal operating system. Risk management efforts may seek to reduce service changes due to accidents to a minimum by having available an adequately prepared backup system or plan.

The agency's effectiveness also may be enhanced through risk management by expanding available transportation options. One of the major barriers to the use of volunteers, drivers of agency vehicles, part-time employees using their own vehicles, volunteers using their own vehicles, contractors, loaned vehicles and other options is insurance. An alternative backup system may be to resolve insurance questions for these groups so that these other options are available.

Minimizing Uncertainty

Minimizing uncertainty is another prominent objective of risk management. The uncertainty about what could happen in case of an accident, for example, may be so overwhelming that a volunteer may refuse to participate. Uncertainty about safe procedures to use in assisting the passengers may greatly

reduce agency employees' self-confidence and satisfaction in performing their jobs. Providing a relatively safe, worry-free atmosphere is essential for the proper functioning of an organization. A risk management program with the objective of minimizing uncertainty therefore can create a more pleasant working environment and thus can reduce employee/volunteer/contractor turnover.

Uncertainty also may reduce the agency's effectiveness by reducing its available options. If a new activity embraces unfamiliar hazards, it increases the uncertainty in the minds of those considering the activity as to their ability to avoid possible serious losses due to the new risk. The acceptance of an otherwise workable plan thus is blocked. One objective of risk management is to control new venture losses so that uncertainty may be reduced and will not unduly affect a decision to use the new option. In this case, risk management efforts include the development of standard operating procedures and training programs and the assurance of liability protection.

Avoiding Public Criticism

Finally, another objective of risk management may be to avoid public criticism. The lack of training, emergency procedures or vehicle maintenance which result in an accident bring sharp criticism upon the human service agency. Every agency manager worries about a serious agency accident in which there is a new untrained driver, a defective vehicle, inadequate managerial direction or a combination of these three and which generates extensive local media publicity. A risk management program may be designed to build management credibility in the event of an unavoidable accident to indicate that the agency has taken every possible action to avoid the accident.

One of the reasons for having state standards, state vehicle inspections and recommended training programs is so that the agency can show that it meets all recommended standards; thus it cannot be criticized if an accident happens.

An unusually unsafe operation can create a poor public image. In fact, most regulatory laws, standards and other controls are responses to a serious and highly visible accident which can be traced to poor management. Public response then becomes formalized in the form of laws or regulations which prescribe minimum levels of risk management for all similar groups. For example, a nationally publicized California school bus hijacking in 1978 led to the establishment of extensive school bus anti-hijacking measures.

In the past year, major public investigations have been held to determine the cause of various human service agency accidents. For example, the National Transportation Safety Board conducted a detailed investigation of a social service van accident in Delta, Utah. The state legislature in Tennessee conducted a formal hearing into a school bus accident near Nashville. The investigations usually ask the following questions:

1. Was the vehicle in good repair with all required safety equipment?
2. How old was the vehicle?
3. Was the driver well qualified and in good health?
4. Did the driver receive proper training?
5. Was the driver instructed to use an unsafe road, an unsafe driving procedure, or an unsafe passenger loading procedure?
6. Were the passengers adequately secured in the vehicle?

Future funding, state and federal regulations and liability suits are determined by the answers to these questions.

The objectives of a risk management program depend on the goals or mission of the agency. In many cases, the agency will have several objectives. Each agency must establish its own objective mix and must structure its risk management program to accomplish the defined objectives. Each risk management program must be evaluated on the basis of how well it accomplishes each objective.

A recent study indicates that human service agencies have a tendency to purchase insurance to meet minimum insurance requirements set by either the state or the funding agency. Few programs attempt to protect the passengers. Only 37 percent have uninsured or underinsured motorist coverage above the minimum amount. There seems to be much greater concern about protecting the vehicle; 84 percent of the human service agencies have collision coverage. Ten percent of the human service agencies are very concerned about protecting themselves from very large suits and have high-limit liability coverage. Two percent simply obtain the minimum liability coverage available.*

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*Davis, F. W., Jr., D. A. Burkhalter, W. W. Dotterweich and T. Cleary, The Social Service Insurance Dilemma: Problems, Analysis and Proposed Solutions, Springfield, VA: National Technical Information Service, 1978, p.27.

CHAPTER V

IDENTIFICATION OF RISK AREAS TO BE MANAGED

Purpose: This chapter makes the transition from the legal duty identified in Chapter III to specific actions that should be audited in evaluating the specific human service transportation risk.

Identification of the specific risk exposures in a human service delivery agency transportation program is an important step in initiating a risk management program. A systematic review of the agency's operation is necessary to identify the potential for accidents and losses that exists when human service clients are transported.

Exposure areas for a transportation program may be categorized into three areas:

1. Risk that individuals other than passengers (the general public) may be injured by the human service agency vehicle;
2. Risk that passengers inside the vehicle may be injured; and
3. Risk that passengers being assisted while outside the vehicle may be injured as may be the case when door-through-door service is being provided.

Each area should be reviewed for its loss potential so that a program to manage each of these potential loss areas can be enacted.

Risk to Individuals other than Passengers

Risk to nonpassengers involves the damage that a vehicle can do to the general public, both bodily injury and property damage. The agency is obligated to reduce the chances that its vehicles will be responsible for damage or injury to any other vehicle, to pedestrians, to passengers, or to property. A vehicle is a passenger conveyance, but it has the potential to

inflict serious injury when it goes out of control. The factors contributing to an accident can be separated into vehicle and equipment factors, human factors and environmental factors.

Vehicle and Equipment Factors. When a vehicle or its equipment malfunctions, a chain of events may begin which eventually will end in an accident. An example would be a failure of tail lights which causes a rear-end collision that otherwise would have been avoided. Equipment failure also may be a cause of increased losses when an accident does occur. For example, a discharged fire extinguisher would lead to greater damage in the event of a vehicle fire.

A strict maintenance program can help manage this area of risk. When high standards of vehicle maintenance are practiced, avoidable vehicle and equipment malfunctions should not cause transportation accidents. A strict maintenance program would include a daily safety check, regular scheduling of the manufacturer's suggested maintenance, a well thought-out schedule for vehicle replacement, good records of maintenance efforts and management review of maintenance functions.

A daily safety check may be facilitated with the aid of forms which list the items that require daily checks. Figure V-1 is a form used for school buses. The operators of the vehicles are the logical persons to be responsible for this task since they are near the vehicles and the safety check will make them more safety conscious.

Maintenance work suggested by the manufacturer of the vehicle needs to be performed. The engine, drive train and exhaust, chassis, body, brakes, battery and electrical system and safety equipment need the care of a qualified mechanic.

DATE	DRIVER AM	DRIVER PM
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		

School Bus

Pre-trip Inspection Log

Bus No.____

Month of____ 19___

Published in the interest of safety by

THE TRAVELERS

The Travelers Insurance Companies
Hartford, Connecticut 06115

C-17662 NEW 6-74 PRINTED IN U.S.A.

FIGURE V-1

SAMPLE DAILY SAFETY CHECK FORM

INSTRUCTIONS

- Mark as follows:
  - ✓ OK
  - O = Needs attention
- Use upper section of box for AM
- lower for PM
- All items defective or requiring attention should be written up on a vehicle Condition Report
- Sign log after each inspection

	ITEM	DATE																													
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
INSIDE	Windshield																															
	Windshield wipers																															
	Mirrors																															
	Engine operation																															
	Gauges																															
	Horn																															
	Steering																															
	Clutch																															
	Brakes																															
	Heater Defroster																															
	Seat belt																															
	Interior lights																															
	Windows																															
	Emergency exits																															
	Seats Floor																															
	Emergency equipment																															
OUTSIDE	Tires																															
	Wheels																															
	Exhaust system																															
EXTERIOR LIGHTS	Head																															
	Stop/Tail																															
	Turn																															
	Flasher																															

FIGURE V-1 (Continued)

Responsibility for maintenance should be specifically delegated to a person in the agency with the authority to see that it's done. However, this person cannot be expected to identify personally all of the mechanical problems. The more responsibility drivers are willing to assume for identifying mechanical problems and for verifying that repairs are adequate, the more effective the maintenance program will be. There is no substitute for daily vigilance of the driver.

The funding of maintenance is a major indicator of the quality of a maintenance program. Funding includes proper garage facilities, proper tools and qualified mechanics who are constantly trained on new methods. The agency should have a special fund set aside to cover maintenance so that maintenance does not have to be postponed due to a shortage of funding. If maintenance service is purchased, the garage performing the service should have proper facilities and qualified mechanics to do the work required.

One method for insuring adequate funding of vehicle maintenance and replacement is to set up a special transportation fund. Under their approval, the agency estimates what it will cost to operate the vehicle on a monthly and/or mileage basis. Allowance is made for depreciation, routine maintenance, fuel, tires, repairs and cleaning. The agency then pays into the fund based upon the miles operated, and the fund pays all vehicle operating costs. This avoids the problem of a large repair bill at the end of the budget period. Some large companies set up a separate company to handle vehicle acquisition and maintnenace. The transportation subsidiary simply charges the parent company a set mileage charge for use of the vehicle.

A great benefit to the person responsible for maintenance is a checklist of each definable area of maintenance which is kept up-dated as maintenance is being performed. Figure V-2 is a sample checklist. Formal records of maintenance activity need to be kept as they are the best sources to ensure the quality of a maintenance program and to identify potential problem areas.

Common problems which may arise in a human service agency maintenance program may be stereotyped as follows:

1. There can be a tendency to forego maintenance in order to purchase additional fuel for more trips when budgets are tight.

2. There can be a tendency to use in-house mechanics who may not have adequate training or tools. There can be a tendency to have in-house mechanics attempt to do work that they are not trained to do rather than to incur the expense of taking the vehicle to a garage. There can be a very strong incentive to do this, especially if the in-house mechanics are not busy.

3. There can be a tendency to use county garages that have mechanics who are well trained for trucks, tractors and road building machinery but who are not familiar with vans and station wagons.

4. There can be a tendency to postpone maintenance until the next budget year.

Human Factors. The human factor plays a large part in vehicle risk. Because the driver is the person controlling the vehicle, the driver's actions determine whether or not the agency vehicle will cause damage to the general public. Unskilled or careless driving behavior may result in a large loss accident for which the agency is liable.

The human factor may be controlled by risk management. Selection of good drivers is a suitable start in managing this type of risk. Training drivers in defensive driving techniques, emergency first aid (including cardiopulmonary resuscitation) and general safety consciousness is very

PROPOSED BUS MAINTENANCE AND SAFETY INSPECTION

2500 Miles or 30 Days

Coach No._____Mileage_____Date_____

TYPE OF OPERATIONS TO BE PERFORMED — IF O.K. "X" REPAIRS NEEDED

ENGINE

_____Ck. all fuel lines & connections for leaks
_____Ck. engine & radiator for water leaks
_____Ck. fuel tank for leaks & mounting and adjust all belts
_____Ck. engine for oil leaks
_____Ck. air cleaner
_____Ck. exhaust leaks-manifold and gaskets

DRIVE

_____Ck. exhaust pipe & muffler
_____Ck. clutch clearance
_____Ck. drive line & universal joints
_____Ck. trans. & differ. for proper oil level, mtg. & seals
_____Ck. drive shaft for guard

CHASSIS

_____Ck. steering arms, drag links & tie rod ends
_____Ck. steering gear, mounting and oil level
_____Ck. all springs, shackles & "U" bolts
_____Ck. axle flanges & studs
_____Ck. grease seals for leaks
_____Ck./tighten all wheel lugs

BATTERIES

_____Ck. battery cables
_____Ck. water for proper level

SAFETY EQUIPMENT

_____ Accident reporting kit
_____ Fire Extinguisher
_____ First Aid kit
_____ Flares or emergency road equipment
_____ Spare tire and jack (check for air)

BRAKES

_____Ck. tubing hoses condition & protection
_____Ck. pneumatic check valve
_____Ck. hydraulic system, (leaks & condition)
_____Ck. air compressor
_____Ck. parking brake
_____Ck. lining, drums & adjust
_____Ck. brake system for air leak
_____Ck. brake & throttle interlocks
_____Drain air tanks

BODY

_____Ck. emerg. door & warn sign.
_____Ck. doors sensitive edges
_____Ck. door operations, timing warning bell
_____Ck. shutter operations
_____Ck. windshield wiper & blade
_____Ck. fire ext. & first aid k
_____Ck. body and seats
_____Ck. loose grab rails & stanchions
_____Ck. all mirrors
_____Ck. flooring condition
_____Ck. tires
_____Coach greased as per schedu

ELECTRICAL

_____Ck. all instruments for pro operation
_____Ck. horn
_____Ck. all lights
_____Ck. directional signals
_____Ck. warning devices-low air oil & temp.
_____Ck. electrical wiring (condition & protection)

_____
MECHANIC'S SIGNATURE

FIGURE V-2

SAMPLE MAINTENANCE CHECKLIST

beneficial. Keeping safety foremost in the minds of drivers may be accomplished by safety meetings. A safety meeting built around a driver training movie can be very effective. Appendix A shows the general format of a safety meeting. The agency's insurance carrier is usually very willing to help provide material and training.

Award programs are another method by which driver safety consciousness can be raised. A file containing driver accident and award records is the basis of the system. Related to an award program is an accident review panel which can determine impartially the preventability of a driver's accident. It is important that drivers see that management is concerned about having a completely clear accident record. The safety meeting is intended to form a bond of understanding concerning accident prevention between the management, employees, volunteers and contractors. An accident review panel also is a place where management attitude is revealed. Appendix B is a sample accident review form to assist the accident review panel. Although it may be very difficult to assign the responsibility for an accident to any one factor, it is important that any driver error or other unsafe practice be reviewed and eliminated in future operations.

Environmental Factors. A third contributory factor to be identified in accident risks is the environmental factor. The risk of an accident is determined in part by the traffic and road conditions encountered along a transportation route. Although society dictates these environmental factors, the environment can be managed to a certain extent by routing away from congested and/or dangerous areas as much as possible or by scheduling trips to avoid especially dangerous times of the day. Most major communities have made studies of traffic flow patterns and accident location densities of

their areas. Copies of these studies may be obtained from police, traffic or street departments. If not published, there may be a master copy available for public inspection. In Knoxville, Tennessee, a monthly accident location map is kept in the city's traffic engineering department and is available for public viewing. Such a map is useful for locating particularly bad intersections and other areas which should be avoided if possible. If the locations cannot be avoided, drivers should be warned of the problem areas.

Passenger Risk

Passenger risk is risk of accidental death or injury to the passengers inside the vehicle. Of course, any accident which can cause external damage to the vehicle also can be a cause of injury to the passengers inside, so any risk management effort to reduce the external risk also will reduce the internal risk. But internal risk, which includes injury to passengers and damage to their property, has its own special character that the risk manager needs to identify.

The risk begins upon the embarking of the passenger. Different types of clients require different kinds of handling and care. Wheelchair users, the blind, the frail elderly and passengers with developmental disabilities have special needs which have to be attended to when they are helped on and off the vehicle. A standard operating procedure for the proper loading and unloading of the agency's clients based upon their special needs, which recognizes the risk to the clients as they become passengers, is necessary for the management of this risk. The procedure should concentrate on reducing passenger loading and unloading accidents to both the passengers and to the driver/attendant. (Special training is needed to avoid back injury to

drivers.) Any part of the procedure that has a potential for an accident needs to be identified and limited as much as possible. For example, the possibility of a wheelchair passenger's hands being caught in a mechanical wheelchair lift may be reduced, if not eliminated, by ensuring that passengers place their hands in their laps during the lift process.

The standard operating procedure may include the use of lifts, ramps, stools and other devices for raising the passenger to vehicle floor level. It may include verbal instructions given to clients to avoid unexpected or confused actions on their part, use of grab-rails and proper reach clearance for aid in getting in and out of the vehicle and special traffic control measures taken to prevent boarding passengers from being injured by passing vehicles. (School buses have legal protection during these times.)

After boarding, the next area of risk to persons inside the vehicle is the placement of passengers within the vehicle. All objects, including persons, that are not secured become dangerous missles during sudden deceleration or change in direction of the vehicle, which may occur during a crash. A workable method of tying down wheelchairs should be present and used if wheelchair passengers are carried. Crutches, canes, folded wheelchairs, packages or any other objects must be secured. Temporary seating such as folding chairs should never be used.

The use of seat belts needs to be enforced in order to reduce the risk to passengers inside the vehicle. It does little good to secure a wheelchair unless the person is secured in the wheelchair. Likewise, it does little to reduce the chance of injury to a wheelchair user to place a seat belt around both the passenger and the wheelchair if the wheelchair is not tied down and the weight of the wheelchair (especially an electric unit)

will be forced against the passenger in the event of a collision. Consideration also should be given to other restraining devices, such as shoulder belts for those with upper torso weaknesses and child restraint devices for those children under four years of age. Padding protrusions inside the vehicle can also reduce the risk to passengers. Vehicle specifications should emphasize padding of lift equipment.

Much attention has been given to the use of wheelchair lifts which make it easier for the wheelchair user to enter the vehicle. One advantage of using privately-owned automobiles, however, is that the wheelchair user generally is better protected during the trip. The private automobile offers shoulder belts to support the upper torso, a padded dash to cushion impact, steel beams in the door to protect against collision from the side, head restraint on the back of the front seat and all of the other vehicle safety standards required by the National Highway Traffic Safety Administration. From a risk management standpoint, the agency must decide if ease of entry or safety during the trip is the prime consideration when selecting vehicles to transport frail or nonambulatory passengers.

Lastly, the compatibility and temperament of clients is a consideration when placing them in the vehicle. Actions by the passengers must not distract the driver from the driving task. The major function the driver serves while driving is to transport the client from one location to another. Discipline in the vehicle is a must for the safe transportation of the passengers. A major study of the causes of traffic accidents found that nine percent of accidents were caused by the driver's attention being shifted to an event, activity, object or person within the vehicle.*

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*Treat, J. R., et al., Tri-Level Study of the Causes of Traffic Accidents, Report No. DOT-HS-034-3-5-35-77. Bloomington: Indiana University, 1977, p. 203.

It is recognized that some clients may have unpredictable needs. If passengers require special attention during the trip, an attendant or escort may be needed.

Dispatching procedures, scheduling and routing procedures can create stress on the driver and passengers while enroute. Lengthy trips can bring on fatigue for the driver and may cause discomfort to the passengers. Difficult routes will cause stress on the driver. Any method which will even out the difficulty of the tasks of a group of drivers will reduce the chance that driver stress will be a factor in an accident. Most trips should have upper limits on their transit times which coincide with the endurance of both the clients and the drivers.

To control the risks to passengers while enroute, the driver should be prepared if a medical emergency occurs. Any emergency medical training that a driver has will be beneficial, but the driver must have a procedure to summon help if emergencies occur. Also, a mechanical breakdown should not bring confusion upon the driver. This is especially important in rural areas or during cold weather. The driver should be briefed beforehand on the procedure to follow in case of mechanical problems. The driver should know who to call, what backup transportation arrangement will be made and whether to leave the passengers to get help or whether to stay with the passengers.

Passenger Assistance Outside of the Vehicle

Escorting and special handling of clients outside of the vehicles is an area in which the drivers need special skills that are not a part of the driving task. The commitment of the drivers to the special needs of their passengers is essential in this phase of transportation. For example,

understanding the perspective of the blind, of those with balance difficulties, of those in wheelchairs, of those of extremely short stature, or of those otherwise limited in mobility is important if smooth and accident free assistance is to be given. The effect of a handicap on an individual attempting to use the transportation service needs to be well understood by the driver. In addition, the assistance should be given in a manner that does not embarrass or humiliate the passenger. (When a humiliated passenger is injured, especially if the passenger told the driver not to assist them that way, then the suit will probably be large.) The driver should be skilled in wheelchair passenger assistance techniques and other passenger assistance techniques as they relate to the human service agency clients.

Identification of risk in the area of passenger assistance can begin by consideration of the loading and unloading zones used. A traffic free loading zone with good footing is best. The availability of signs, flashing lights and other warning devices helps while crossing streets, parking in the flow of traffic and escorting clients down steep inclines.

An important point to remember when identifying the risk of loading and unloading passengers is that conditions around pickup and drop-off points constantly change. A procedure for soliciting feedback from the driver on the hazards of loading and unloading zones would be very useful to the risk manager. Continual actions to reduce these hazards by instructing drivers to choose the best loading points or developing special protected loading areas could then be part of standard risk management procedure. Safety meetings are an excellent location for addressing these questions.

Notifying the driver of any special client needs when a trip is dispatched is an aid to risk management. Knowing what to expect will help the

driver avoid an accident because of misunderstanding or surprise. The individual being helped should always know what is going to happen so as not to be frightened.

A passenger file or briefing procedure containing each client's special requirements relating to transportation would give the driver a source of information to use to prepare beforehand for the clients to be transported. The file could record the passengers' special assistance requirements, their tolerance for travel and their experiences in being transported. If an agency has transported a passenger many times before and that passenger has well recognized special needs, the agency can expect suit if the passenger is injured by a new driver who is not aware of the special needs.

When an agency regularly provides transportation to a program beneficiary, the driver should be advised of any special needs or tendencies of the passenger that should be recognized and should have corrective action taken. The driver also should be given detailed procedures for securing a person's house when providing door-through-door transportation. For example, if a driver picks up a wheelchair passenger or a blind passenger who lives alone, the driver has a responsibility to secure the passenger's house. The driver must be trained to ask the passenger for detailed securement instructions. If the passenger is unable to speak, then perhaps a social worker will need to meet with the passenger to obtain detailed securement procedures to present to the agency and the driver. If an agency contracts with individuals, taxi companies or volunteers, the same passenger assistance information should be provided.

Paramedics have a standard procedure to identify several prominent bystanders to assist them in opening a person's wallet or purse to locate

identification and to see if the injured person has any identified medical problems. This is important since it is not unusual for tne paramedics to be charged with theft of personal funds by the injured party. To prevent such charges, door-through-door service guidelines should be established. For example, the driver could be prohibited from being in the house without the presence of the owner and/or witnesses.

When people with special needs are transported, special assistance must be given to assist them in using the transportation without humiliation or injury. If special assistance is required, special training must be given to the drivers. If an agency offers to transport people with special needs, it must be prepared to assist those whom it offers to help. From a purely legal standpoint, risk can be avoided by not offering to serve those who have special needs. Thus no training or preparation is necessary and the risk is avoided. Where the agency has a social mission, however, it must provide the training and preparation necessary to see that all passengers get the assistance they need to complete the trip safely.

Documents Available to Help Identify Risk

Driver Records. The screening process which occurs when drivers (employees, volunteers or contractors) are first hired (recruited or contracted for) should produce a file containing each driver's state department of motor vehicles record, information on the driver's physical condition, the results of a check on the driver's references and comments by the interviewer regarding the driver's employment interview. The driver's file should accumulate a record of the driver's accidents while employed (if any), a record of any driver training, medical emergency training or passenger assistance training and comments received from clients concerning the

driver's performance. The driver's record provides a source by which the driver's skills, attitude and ability to practice self-control are revealed. In summary, a driver file should contain the employment application, the driver's state motor vehicle record, the driver's license number, physical health records, past work references, comments of interviewer regarding employment interview, accident record, record of training and public complaints and compliments. The driver file should be kept up to date.

Vehicle Maintenance Records. Another source helpful in identifying risk, especially in the area of vehicle and equipment failure, are vehicle maintenance records. The records may contain maintenance procedures, records of preventive maintenance performed and daily safety check summaries from the drivers' daily safety log. These records provide a measure of the quality of an agency's maintenance program.

If maintenance is performed by contract, that is, performed by a mechanic in private business and not employed by the agency, the quality of the maintenance program also needs to be measured.

Client Records. Yet another source of records useful to the risk manager are client records. In addition to the necessary information about the client, including special assistance needs, a record of any grievances, complaints or incidents regarding the transportation of the client should be kept. Some hospitals have patient representatives whose function it is to be in touch with patients to respond to their complaints. The theory is that much litigation can be avoided by establishing concern for a patient's complaint before an incident becomes a law suit. In case there is a law suit, information about the incident and the patient/hospital relations surrounding it are on record as good evidence.

Client records for the agency can serve the same purpose. Maintaining a good relationship with the client may prevent a small occurrence from being litigated. In many cases, medical costs for an injured human service agency client can be settled by medicaid, medicare or Veterans Administration benefits. If the agency makes a concerned effort to assist the client in obtaining these benefits, the client is less likely to make a claim with the agency's insurance company for compensation or to file a formal law suit. The agency therefore can reduce its claim losses by coordinating the client's benefits from other sources.

Contract Review. In reviewing risk exposures, it is important to know the contracts and understandings between the agency and its employees, volunteers, contractors and maintenance personnel. A risk management program must consider not only the contractors' levels of competence to do the required job but also their ability to provide reparations for the injured in case of injury.

The level of financial responsibility between the agency and its contract providers needs to be determined. In case of an accident, who will be responsible and to what degree? Is there a degree to which a party will be held harmless (if the other party has the financial ability to hold harmless)? Determination of contractual risk is vital in identifying the amount of loss the agency will have to bear; thus determination of responsibilities is vital in determining the amount of risk involved in the operations of the agency.

A contract with a transportation provider should be reviewed to determine their screening and training procedures. The quality of the provider's

drivers, vehicles, equipment, supervision and operating procedures may be assured by specific requirements in the contract to which the provider must adhere. The Knox County, Tennessee, school board contracts with 125 independent school bus operators to transport students to Knox County schools in 235 buses. The contract requires vehicles to meet age standards, to be maintained properly, to meet all federal, state and local standards and to pass a periodic safety inspection given by the county. California school bus contractors are required to have 20 hours of on-the-road and classroom training before they can drive. By these and other requirements, the school board assures that the risk of a transportation accident is being controlled.

Other Sources of Risk Identification. An understanding of agency operations is crucial to understanding its risk. Personal interviews with driver trainers, maintenance personnel, dispatchers, social workers and other people in touch with clients can reveal risk areas which may have been missed. Drivers may know of the special hazards of various routes, the special passenger problems that occur while the vehicles are moving and that detract from their driving, the conditions around loading and unloading zones and so forth. Social workers in touch with clients know of the possible problems they may have while being transported. Information from these sources may be used to establish a client file; a file which lists the special requirements of the clients as passengers in the agency's transportation program. These requirements are listed and are available to the drivers and attendants of these clients. Experienced maintenance personnel can give a good estimate of the quality of the maintenance being performed, and they can help with the development of a replacement schedule for the vehicle fleet. Driver trainers can give an estimate of the quality of the

drivers being used by the agency and can give some idea of the potential for driver improvement.

One more source for identifying the risk areas of social service agency transportation not to be overlooked is the experience of other agencies. The experience of others gives the agency some idea of the risks it faces. Even public transportation operations such as taxicabs and airport limousines may be used for comparison.

CHAPTER VI

MEASURING RISK

Purpose: Before a risk management program is developed, it is important that each risk identified in Chapter V be measured to determine its potential for loss. Once the risk has been measured, the risk manager can evaluate the benefit of alternative risk management strategies.

To prepare for the consequences of risk, the potential impact of a loss due to the risk must be measured. The more accurate the risk can be measured and the greater the certainty of avoiding catastrophic losses, the more accurate and reasonable are the insurance rates. It is therefore important to understand how risk is quantifiably measured or evaluated.

There are four elements of risk measurement. They are frequency, severity, expected losses and variability. Frequency refers to the number of losses that will occur within a certain time frame. The frequency measurement of risk is a prediction. It is based on the probability that the number of losses which occurs within a time period will approximate a given expected value.

Severity refers to the financial impact of a loss. The average dollar loss per loss occurrence is the measure of severity. It is also a predicted value based on the probability that the average loss per occurrence is centered around a certain expected mean. Most organizations base accident frequency on accidents per one million miles of operation. It is always advisable to compare frequency and severity records not only against the national average, but also against the agency's previous years.

For example, the Highway Loss Data Institute reports on the collision coverage claims for damage to 1977 model year vans under noncommercial

collision coverages. It has data on 3,345 insured vehicle years of the 1977 Ford E-150 Econoline van.* For that amount of risk exposure, there were 291 losses. Therefore, the frequency of the collision risk for the Ford Econoline van is 291 losses per 3,345 insured vehicle years (.087 losses per vehicle). If an agency had 23 noncommercial 1979 model Econoline vans and if all conditions remained the same, two of these vans (23 x .087) would be expected to have collision damages each year.

The Highway Loss Data Institute also reports that the payments for collision coverage claims on the Econoline van for the 3,345 vehicle year exposure was $124,554. This gives a measure of the severity (average cost) of each loss. Because the exposure had 291 losses, each loss averaged $428 ($124,554/291 losses). Therefore, the measure of severity for this risk is $428 average loss per claim.

The expected total losses per period is the product of both the frequency and severity measures. In the example given, the expected total collision damage losses for 23 vans is $856 (2 x $428), which is the product of the expected frequency and the expected severity of each occurrence.

Despite the completeness and accuracy of statistical analysis, variations can happen between the actual losses incurred and the expected losses predicted. The amount of variation is a measure of the riskiness of measuring the exposure. Although a loss of $856 for 23 Econoline vans over a period of a year might be expected, the actual loss may be quite different.

There can be variations both in the frequency of losses and in the severity of losses. If for every 23 insured vehicle year exposures of Ford

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*Highway Loss Data Institute. Automobile Insurance Losses Non-Commercial Collision Coverages. Report HLDI V78-1, Washington, D.C., p. 7.

Econoline vans randomly selected there tended to be about 2 collision losses costing about $428 each, then the variability in the measure of risk is low. However, if for every 23 insured vehicle year exposures randomly selected there is a wide range in the number and severity of losses, with little clustering around an average value, then the variability in the measure is high.

If variation is very low, the insurance is not needed. The agency operating 23 vans could simply budget for two accidents of $428 each and be assured that this was adequate to cover losses. If variation is very high, then the agency probably will want to pay the $1,337.50 insurance premium necessary to protect the agency from a larger loss. (It costs $856 to cover the loss, plus $481.50 for overhead and administration of the insurance process.)

The measurement of a risk requires that it be classified within a large group of similar risks. Aggregate historical data from the group then is used to predict the future expected total losses of the whole group. Under the insurance concept, each member pays a relative share of the expected total losses of the whole group of similar risks.

A finer evaluation of the risk of each group member, though, would reveal that some have a greater chance of loss than others. For example, an agency which buys vans with a factory defect that may cause brake failure will have a greater chance of collision losses than vans without the defect. Those with the safer vehicles would feel it unfair to be classified with the poorer risks. However, as a practical matter, evaluation of individual risk can be refined only to a certain degree. Classifications for risk purposes must be broad enough to include enough risks to provide statistically significant loss data. The insurance industry requires data on 1,069

losses before the data can be considered to be statistically reliable. Thus, if the example van has .087 accidents/year, 12,287 vans would need to be covered in each class to get adequate statistical data. For purposes of fairness to the individual members of the pool, the classification should be narrow enough to exclude risks that are far greater than the average. It is only fair to avoid those exposures that do not manage their risks adequately because they unduly increase the expected losses of the whole class and thus increase the premiums for all. The classification process tries to draw an equitable line between a broad classification and a narrow classification.

The case where a risk is new and unfamiliar presents special problems. Underwriting criteria cannot be set where no statistical base exists. An analogy must be sought instead, but there is a large potential for mismeasurement because a new risk may not be like any other. Until some indication is established of the loss experience (both expected losses and variation) likely to be encountered from a new type of risk, rates for a new risk are set high to hedge against uncertainty. Therefore, the best way to get lower rates is to prove that a risk's losses will be constant and not extraordinary.

A feeling for the size and the nature of automobile losses can be gained through a study of closed claims on private automobile insurance contracts. (Data is not yet published for human service programs.) Automobile injuries are compensated by four major auto insurance coverages:

1. Bodily Injury Liability. This covers the insured's legal liability up to a specified policy limit if the insured causes injuries to someone because of ownership, maintenance or use of the vehicle.

2. Medical. This provides first-party coverage against medical losses of the insured and others in his vehicle. First-party coverage refers to coverage under which the insured collects for his losses from his own insuror regardless of fault.

3. Uninsured Motorist. This coverage enables the insured to recover from his own insurance company, up to a specified policy limit, the amount that the insured would have been able to collect from an uninsured or hit-and-run motorist that caused the accident.

4. Personal Injury Protection. This is first-party, no-fault coverage in which an insuror pays, within specified limits, the wage loss and the medical, hospital, rehabilitation and funeral expenses of the insured, others in the vehicle and pedestrians struck by the insured. Personal injury protection is extended first-party insurance that is used to fill the gap in no-fault states where tort litigation is restricted. It also is offered in some states without any restriction on the tort system as an alternative to tort-based compensation for automobile accident injuries.

The distribution of claims under each of these coverages is shown in Table VI-1. The average number of claims per accident is 1.58 for bodily injury and 1.42 for personal injury protection. (Since vehicle occupancy is higher for human service vans, a larger number of claims can be expected.)

The claimant's age is a factor in accident involvement leading to a bodily injury claim. A distribution of bodily injury liability claims by age compared to the distribution of age in the U.S. population is given in Table VI-2. The table shows, for instance, that the age group from 16 to 20 is involved in automobile injuries more than its proportion of the population warrants. Senior citizens have fewer claims, but they also travel fewer miles each year than younger drivers.

Approximately two-thirds of the economic loss sustained by injured persons arises from medical expenses.* Inpatient hospitalization and physician's fees account for most of the medical expenses. Table VI-3 shows the

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*This statistic varies substantially from the 1970 U.S. Department of Transportation no-fault study which indicates that lost wages comprised nearly three-fourths of all claims.

TABLE VI-1

PERCENTAGE OF BODILY INJURY CLAIMS BY COVERAGE

Coverage	% of Claims	Average Payment
Bodily Injury	41.6	$2,955
Uninsured Motorist	5.0	3,316
Medical	16.4	502
Personal Injury Protection	37.0	920

Source: All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 19.

TABLE VI-2

DISTRIBUTION OF BODILY INJURY CLAIMANTS BY AGE

Age	% Claims	% U.S. Population
0-15	12.8	26.4
16-20	18.2	9.8
21-24	12.9	7.2
25-44	34.1	25.6
45-64	17.0	20.3
over 65	5.0	10.7

Source: All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 29.

TABLE VI-3

ECONOMIC LOSS BY ELEMENT OF LOSS
(Tort States)

Element of Loss	Average Loss	% of Total Losses
Total Medical	$ 755	66.3
Wage Loss	1,033	31.5
Essential Services	697	.9
Rehabilitation	676	.1
Funeral Expenses	1,735	1.2
Total	$4,896	

Source: All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 41.

average economic losses by the element of loss for those states without personal injury protection no-fault laws. The distribution for states with personal injury protection no-fault laws is very similar.

Economic losses by size of loss shows that most of the losses are under $500, but that almost half of the total cost of losses comes from losses greater than $5,000. Table VI-4 shows the distribution of economic loss by size of loss for states without personal injury protection no-fault laws.

Medical expenses tended to increase with age. Wage losses increase steadily with age up to age 65. Both medical expenses and wage losses tend to be lower for females than for males but females over 65 had highest medical losses. (This may be an important consideration for human service agencies.) Table VI-5 shows the types of economic losses by age and sex. Fewer than 20 percent of the claimants were hospitalized, and most hospital stays lasted less than two weeks. About 30 percent of the bodily injury claims involve reimbursement for days of wage loss. Two weeks is the median amount of work days lost from an injury. The average for wage loss is $2,300.

Table VI-6 shows the frequency of use of various reimbursement sources. Automobile insurance covered only two-thirds of the losses and claims. The greater the economic loss, the greater the likelihood that more than one reimbursement source will be used. In general, government benefits were only available to a small group of people in this sample. Where they were available, they were heavily used, and the injured received more per person than from other reimbursement sources (3.7 percent of the injured received 5.6 percent of the total dollars paid and these payments were from government sources). When an agency transports primarily senior citizens or

TABLE VI-4

ECONOMIC LOSS BY SIZE OF LOSS
(Tort States)

Economic Loss ($)	% Of Losses	Cumulative Percentage of Losses	% of Total Dollar Amount	Cumulative Aggregate Percentage of Dollar Amount
0	8.0	8.0	---	---
1-500	59.4	67.4	9.2	9.2
501-1,000	12.8	80.2	8.9	18.1
1,001-2,000	9.2	89.4	12.7	30.8
2,001-5,000	6.8	96.2	20.6	51.4
5,001-10,000	2.2	98.4	15.0	66.4
10,001-25,000	1.2	99.6	17.9	84.3
over 25,001	0.4	100.0	15.7	100.0

Source: All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 41.

TABLE VI-5

ECONOMIC LOSS BY AGE AND SEX OF CLAIMANT

Age	Average Medical Loss		Average Wage Loss		Other Loss	
	Male	Female	Male	Female	Male	Female
0-15	$ 714	$ 473	$ 15	$ 1	$20	$ 19
16-20	936	665	187	172	36	33
21-24	1,154	661	600	263	39	14
25-44	1,005	797	846	390	17	21
45-64	956	1,037	1,004	414	28	46
65 and over	1,061	1,511	293	70	71	230
Total	$ 968	$ 792	$ 579	$275	$28	$ 38

Source: All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 43.

TABLE VI-6

USE OF REIMBURSEMENT SOURCES

Reimbursement Source	% of Total Injured	% of Total Dollar Paid
None	13.7	---
Group Health	32.1	22.3
Worker Compensation	2.8	3.5
Auto Insurance	65.9	67.5
Government Sources	3.7	5.6
Other Insurance (i.e., Life Insurance)	3.0	1.1

Source: All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 127.

others eligible for public benefits, medical cost may already be covered since virtually all passengers will be covered by government benefits such as medicaid, medicare and Veterans Administration benefits.

It is important that human service agencies begin to accumulate data of the frequency, severity, cost, variation and source of reimbursement for human service vehicles to guide them in evaluating their risk management programs. The heart of a good risk management program is data to evaluate various types of risk situations and to develop alternatives for managing the financial impact of the loss. In the case of human service agencies, many program beneficiaries are already covered by existing public benefits. The fact that the insurance companies are severely restricted by the various state collateral sources rules makes it extremely important for human service agencies to become involved in the coordination of benefits to prohibit multiple payment at public expense for the same injury.

CHAPTER VII

ALTERNATIVE METHODS FOR DEALING WITH RISKS AND THEIR APPLICABILITY

Purpose: Once risk managers have identified and measured each human service risk, they are ready to develop a strategy for coping with the risk. This chapter is designed to identify various strategies that can be used to either eliminate a risk, accept or transfer the risk. Insurance, for example, is simply one method of transferring a risk.

In dealing with the risks facing an agency, there is often a tendency to assume that insurance is the only method available for coping with potential financial loss. A variety of methods, including insurance, may be used alone or in combination to cope with risks at the agency level. These methods are explained in some detail. Criteria are set forth to aid in determining how these methods might be used to deal with specific risk management problems. Although admittedly an oversimplification, the mnemonic "EAT" has been used to identify the three major categories into which all risk management techniques fall--elimination, assumption and transfer.

Elimination

This broad heading includes a variety of methods for getting rid of all or part of any risk.

Avoidance. In its strictest sense, avoidance is a deliberate effort to avoid any particular risk exposure. While risk avoidance is simple and absolute, there are serious practical limitations to the application of this method. Carried to a ridiculous extreme, it could be said that an agency can avoid all risks by merely disbanding the agency--if it does nothing, it has no risks. On the other hand, common sense would dictate that a variety of functions and activities are essential to successful agency operation and to achievement of the agency's goals.

However, avoidance might be used either where a particular activity or function is unnecessary to the overall goals of the agency and, therefore, can be discontinued or where the same function can be performed by someone else such as contractors or volunteers.

Transferring the transportation task to another group is one way of avoiding the risk of a transportation accident. Clients could be given a ticket or voucher and instructed in the use of local transit systems, taxicabs, other human service or nonprofit agencies or some other transportation provider. They may even be referred to family, friends and neighbors who will drive them to the agency, perhaps with the agency reimbursing the person who transports them. If an intercity trip is involved, they could be referred to an intercity bus line or even an airline. The agency helps the client find transportation, provides instructions on how to use it and may even pay for it; but because the agency does not actually provide the transportation, it is not liable for accidents. In this way, liability for transportation accident is eluded by the agency and is taken on by the provider found for the client. (This is an approach frequently used by the Veterans Administration which, for example, reimburses the veterans for their costs of transportation. It avoids liability and eliminates capital, operating, dispatching, maintenance, and other managerial problems.)

Liability for negligent maintenance efforts may be avoided by contracting with a local garage for maintenance or by contracting for transportation where the vehicle is maintained by the contractor. If the agency is reasonably prudent in selecting a qualified garage, liability for an accident due to negligent maintenance would generally belong to the garage. The contractor, whether a local cab company, an individual owner/operator, a staff employee using a personal car or a volunteer who uses a personal vehicle,

would be responsible for maintaining the vehicle, thus transferring this risk from the agency.

The risk of transporting passengers to a service may be avoided by transporting the service to the client. Meals-on-Wheels is an example of this. Although transportation risk is still present, liability to passengers is not incurred. Some other examples of service being transported to clients are a bookmobile, drug and grocery deliveries and the establishment of neighborhood clinics.

Selective risk avoidance is another means of handling risk. Traditional transportation companies realized that if they could avoid serving passengers with special risks or could avoid hauling hazardous goods, they could control their losses, their insurance costs and their employee training budgets. The establishment of a specific bus stop, for example, meant that only people that could get to the bus stop could use the service. It was easy for them to encourage special-risk passengers to use alternate transportation providers or to offer free transportation to an escort who assumed responsibility for the special needs of the special risk passenger. Airlines, for example, refuse to transport children under five unless accompanied by an adult. Bus companies give free passage to an escort traveling with a handicapped person.

Human service agencies are finding it necessary to serve a need mid-way between the transit bus and the ambulance. Their humanitarian missions will not allow them to avoid serving their beneficiaries' special needs, nor will their limited budgets allow them to pay ambulance rates.

To control losses, however, they are finding that they require a higher level of training than is required of transit bus operators but less training

than is required of ambulance paramedics. The major differences in training is not the special paramedic training required of the ambulance driver, nor the ability to control a large vehicle like the transit bus operator; the difference is the ability to assist people with special needs to adapt to the service that is provided. Thus, humanitarian concern on the part of the driver is the most important area for human service agency risk management.

Loss Control. A broader and more practical dimension of elimination is generally referred to as loss control. This represents a partial avoidance through either reducing the number of losses (frequency) that may occur or reducing the economic impact (severity) of those losses which do occur. In both cases, the efforts at loss control are directed toward minimizing the occurrences of losses and the undesirable effects of losses while maintaining the risk within the agency. Any loss control program implies a high degree of advance planning through which steps are taken to identify perils, hazards and outcomes which can be expected in the event of loss.

One of the most effective loss control devices is that of hazard reduction. Hazards have been defined as those conditions or circumstances which increase the likelihood of a loss arising from a particular peril. Hazard reduction is the process through which advance identification of hazards is made and a variety of technical and psychological steps are taken to eliminate or reduce the existence of these hazards. Examples abound, but the adherence to vehicle safety standards, driver training and proper securing of passengers all represent hazard reduction techniques.

Loss control programs require more advance planning, technical research, innovation, record keeping and follow-through than any other risk management device. A loss control program is only as good as the foresight and administrative follow-through that go into it. A significant amount of help and

guidance can be obtained in this area through national safety organizations, the insurance industry, industrial safety firms and government organizations. But once the areas for loss control have been identified and the means for achieving gains in these areas have been determined, emphasis should shift to implementation and to education and training of personnel. Except for acts of nature which cause losses, most failure to prevent losses can be attributed to human error or lack of judgment.

Education and training must start with the risk management principles themselves and the ways in which these principles can be applied in loss control programs. The focal point of such training begins within the management of the agency itself where each responsible person recognizes the importance of loss control programs and overall responsibility is assigned for their implementation. Such implementation, of course, takes place at the day-to-day activity level of drivers, maintenance personnel, volunteers, contractors, clients and others. A loss control program will never work unless the manager actively participates, it is disseminated to the personnel and an understanding of its importance and how it must operate is conveyed to them.

Safety programs generally encompass anticipation of losses, practice of avoidance, loss prevention activities and proper instruction in what to do in the event of accidents. Such things as first aid, proper handling of clients and vehicles, summoning of emergency help, notification of the agency and the keeping of appropriate accident records are involved in proper safety programs.

A very specific area in which loss control can be practiced has to do with employee selection and training. The purpose here is to obtain the

best qualified and best equipped persons for particular jobs, such as vehicle drivers. The agency should make every effort to avoid individuals who are alienated to the mission of the agency and persons with moral or morale hazard tendencies. The agency should select applicants who have the necessary motor skills, attitudes and motivation so that they can be effectively taught the special passenger assistance skills required of vehicle drivers. Those individuals who are under severe stress, those who rebel against highway rules, and those who are subject to health problems which can affect their driving ability should not be selected. Applicants should subscribe to the overall agency mission of client service and safety. One of the advantages of volunteers is that they identify closely with the agency's objectives; otherwise, they would not have volunteered.

In general, an agency which has the managerial desire to reduce accidents, which has a good driver selection and training program and which has a good maintenance program will have fewer losses than an agency with a transportation program without a strong loss control effort.

Loss Reduction. When the limitations of avoidance and loss control have been reached, attention should turn to loss reduction activities so that the cost of actual losses can be minimized. Loss reduction can be achieved through improving claims handling techniques and through making it mandatory for drivers not to admit liability in the event of an accident or especially not to engage in arguments or fights following an accident. (This is not an unusual occurrence.) Proper client handling devices such as safe hydraulic lifts and wheelchair hold-downs in vans, accompanied by personnel who are skilled in their proper use, are good examples of loss reduction techniques which do not keep accidents from occurring but which minimize the loss effect of the accidents.

A method of loss reduction available to governmental human service agencies is the limitation of liability by legal means. An outgrowth of governmental immunity is the Board of Claims. The South Carolina Board of Claims, for instance, is given the authority to promulgate rules and regulations for the settlement of claims against the various state agencies and personnel. When a vehicle from a state-related agency is in an accident with a civilian vehicle, the civilian party must make a claim for compensation with the state Board of Claims. The Board of Claims' decision is final. The Board of Claims therefore is in a position to protect state agencies from unexpected, very large losses.

Another example of legal limitation of liability is the special protection afforded school buses. Other vehicles are required to stop when they meet or overtake a stopped school bus. A vehicle failing to stop automatically would be considered the negligent party in case of an accident, so the liability of the school bus operation is limited. Human service agencies which qualify as schools may be protected in this fashion. Other human service agencies may consider the passage of similar legislation for the vehicle.

> Special legal protection for various classes of vehicles is not limited to school buses. Several communities require vehicles meeting or overtaking ice cream trucks to stop before reaching the vehicle when the vehicle is displaying flashing lights. In Detroit, for example, trucks vending ice cream to children in residential areas are required to have flashing lights and a stop signal arm of a specific color, very similar to a school bus. When children run across the street toward the ice cream truck, this equipment is to be activated. There may be ample justification for similar protection for human service vehicles. These special laws can be either state or local.

Assumption of Risk

To the extent that risk cannot be avoided or controlled in other ways, attention should be directed to a second option--risk assumption. A decision to assume the risk should not be made in a vacuum but should be weighed against the third alternative--transfer of risk. In other words, those risks which cannot be eliminated may be kept or may be transferred to someone else.

Under what circumstances might the agency consider keeping (assuming) these risks? Why should an agency even consider assuming these risks? Why might it make sense to keep any risk if insurance (for example) is available as a means of transfer? Obviously, the answer to these questions has to do with the costs associated with each alternative. Assumption makes sense only when risks can be retained at a lower total cost to the agency than the total cost of transfers.

In deciding whether or not to assume the risk, two questions must be answered. First, is assumption of the risk even feasible? Second, if feasible, is it better or worse than transfer (for example, insurance)? Fortunately, rational decision-making rules are available to aid in making both of these decisions.* With respect to the first, assumption of risk is feasible and should be considered whenever at least one of the following is true:

1. It is impossible to avoid or transfer the risk.

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*Heins and Williams, Risk Management and Insurance, 3rd Ed., New York: McGraw-Hill, 1976, pp. 190-191.

2. The expected total losses arising out of the risk are so small that they can be absorbed easily in the current operating budget. For example, minor vandalism of agency property could be assumed. The key here is that the maximum potential loss be limited.

3. Where losses have a high probability of occurring (that is, the losses are almost certain to happen to every agency), total costs of transfer would approach or even exceed the cost of assuming the losses within the agency itself. A good example here would be certain vehicle maintenance costs such as tire replacements or periodic vehicle overhauls. A good figure to remember is that 64 percent of the insurance premium goes to settling claims and 36 percent goes to overhead and administration.

4. The agency has a large number of homogeneous risks (exposures) so that a bona fide program of self-insurance based upon accurate and confident predictions of losses and expenses may be practiced at a lower cost than any transfer alternatives. For example, if an agency operates 50 vehicles, it is probably cheaper to assume both comprehensive and collision coverage than to insure for it.

Assuming an affirmative response to one or more of the foregoing criteria, the agency may want to consider risk assumption. Risk assumption options include partial assumption, full retention and self-insurance.

Partial Assumption. Partial assumption is illustrated best by the familiar deductible concept used in automobile collision insurance. In an endeavor to keep overall premium cost down, the deductible has been utilized to eliminate the small but highly frequent losses of the "fender bender" or "bumper" variety. The notion is that it is cheaper for the insured to pay for the loss directly than to channel it through the insurance company where loss adjustment costs and administrative overhead are tacked on to the actual dollar losses. The deductible becomes a partial assumption of risk and represents a very flexible option because, generally speaking, the higher the deductible the lower the insurance premium will be for the residual amount of exposure (potential loss) transferred. The amount of deductible assumed or retained, of course, will be determined partially by the

size of the agency's budget and by its ability to absorb the amount of deductible on each loss within its current operations.

An interesting variation on the deductible is that which is known as an aggregate or catastrophic deductible. This often can be combined with individual per loss deductibles as well. For example, if an agency agrees to retain the first $500 of collision loss per vehicle, its collision insurance premium would be reduced substantially. However, if the agency operated a fleet of vehicles, say 10, it is possible that all 10 could be damaged at one time. If the agency could not cope with the resulting $5,000 aggregate deductible, it could purchase a catastrophic deductible which would provide coverage whenever total individual deductible losses excluded a given amount, such as $1,000 at which time all additional losses during the policy period would be covered in full under the catastrophic coverage. This is similar to the concept used by some major medical policies.

Full Retention. The term retention is used when the agency keeps the entire risk. Once again a risk not avoided or transferred, by definition, is retained as a responsibility of the agency. It has been said that whether an organization realizes it or not, it has a risk management program. This means that, as long as risks exist, something will have to be done about each loss which occurs. If no preparation has been made to avoid or transfer the risk, then its financial impact will fall fully upon the agency. Such "retained" risks can be divided into those which are retained actively as the result of a rational decision-making process and those which are retained passively because the agency did not recognize the risk or take any action to manage it.

Under active retention, a deliberate, conscious acceptance of the risk involved has been agreed to by the exposed organization. This usually comes about only after the risk is evaluated properly and the alternatives are weighed carefully. In other words, it is a conscious decision representing the "best" method of dealing with the risk after viable alternatives have been eliminated. For example, if an agency has a very tight budget and few assets to lose in case of a law suit, and if most program beneficiaries are covered by medicaid, medicare, Veterans Administration benefits or other public benefits, the agency may decide to assume all passenger losses.

Alternately, passive retention often comes about in an insidious manner. This means that a risk may not have been identified or anticipated, thus a loss from a particular peril may be unexpected. Because no advance preparation has been made, the risk is still a retained risk, although not by choice. In fact, if the risk had been anticipated in advance, some method other than retention might well have been used.

Self-Insurance. It is important to distinguish between retaining risk (either actively or passively) and a true self-insurance program. With retained risks, very little may be known about what to expect in the way of losses, and frequently, little or no preparation has been made in advance toward meeting the financial losses which may be incurred. Self-insurance, on the other hand, implies a sound program of planning for and funding of future losses in the same way that a commercial insurance company might do. In effect, this is a special case of active retention where a deliberate choice has been made to retain losses.

Self-insurance is a situation in which sufficient reserve funds are maintained to meet the maximum self-retained loss. Two conditions must be

met. First, for an agency to self-insure, the maximum self-retained losses must be predictable. Generally, a fleet of 50 or more vehicles is required. This is because a large number of relatively homogeneous risk items which are exposed to loss are needed so that expected losses for a particular period may be determined accurately and confidently through statistical techniques. Just as an insurance company anticipates its loss ratio, so must the agency having a large "pool" of risks anticipate its loss ratio. Second, an adequate and dependable arrangement must be made to fund (pay for) these losses as they are incurred. One simple procedure for doing this is to pay an amount equal to the rate quoted by the insurance company into a self-insurance account. All losses are then paid from this account. Once an adequate reserve fund is accumulated, payments can be reduced until they are just adequate to maintain the reserve fund. The main problem with this approach is that the agency may have a large loss at the beginning of the self-insurance program. In this case, funds will have to be borrowed until the accumulated reserve is built up. A layer of insurance above the self-retained level usage will protect the agency from extraordinarily large losses above the predicted amount. Only where these two elements, predictability through a pooling of risks and funding for expected losses, are present is it proper to call the arrangement self-insurance.

Self-insurance is not true insurance but is a well-managed retention program based upon fundamental insurance principals. A fund is maintained for the expressed purpose of paying for the future losses expected due to the retained risk. The retention program requires that 50 or more exposure units be included, that funds be accumulated to meet losses and that individual exposure units be located in such a manner to prevent a catastrophic, one-time

loss. If not so distributed, risk should not be retained but should be transferred by insurance.

A special case of self-insurance is known as ASO (administrative services only). Such plans are developed in cooperation with insurance companies where, in effect, the agency contracts with the insurance company to handle all claims investigation and payment of losses incurred and to charge the agency the actual dollar amount of these claims over the accounting period plus a small additional charge for the actual services rendered by the insurance company in the investigation and payment of the losses. This payment is usually a small percentage of losses (perhaps ten percent) which is extremely attractive because it not only puts a "cap" on the relative costs of services above claims, but it also provides expertise and special services through the insurance company that the agency normally would not be able to provide at a competitive cost. If the agency is large enough or if several agencies can combine fleets to justify such a program, it may be a very attractive option. A somewhat smaller agency could use this approach if it obtained catastrophic coverage which would provide a "stop loss" arrangement above which very large losses would be paid under the catastrophic insurance contract.

Transfer

The third and most popular method of dealing with risks is to transfer to a third party some or all of the risks facing the organization. Transfers can take many forms.

Deductibles. A partial transfer is said to exist when some of the risk is retained while the remainder is passed to another person or entity. The most common example of this is the deductible concept wherein the party at

risk keeps a portion of the risk known as a deductible, and the transferee accepts all the risks above this, often up to some fixed limit. Retention of basic losses subject to an aggregate or "stop loss" limit, similar to that described above, beyond which excess losses are transferred to a third party insurer is a common arrangement. Fundamental to the concept is that the organization retains that portion of the risk it can handle financially and transfers that which would represent a severe financial burden. A variety of methods can be used to facilitate the actual transfer of that portion of the risk beyond retention.

Contracts and Agreements. When an agency signs an agreement or contract where the other party (for example, a transportation contractor) agrees to assume all risk and to hold the human service agency harmless in case of accident, the agency has transferred risk. (It should be remembered, however, that the hold harmless agreement is only as valuable as the contract for financial ability to honor it.) Subcontracting for services is an excellent example of the operation of this procedure, as is the introduction of a variety of "hold harmless" agreement contracts wherein the transferee agrees to hold harmless the transferor who normally would have responsibility for losses arising out of the service for which the contract is written.

Another noninsurance method of avoiding risk is by the use of the contractual limitation of liability. Contractual limitations of liability have been held to be valid when the parties are of equal bargaining strength and when the contract is based upon sufficient consideration.

In considering the validity of disclaimers of liability, the question of equality of bargaining power is most important, because if a court determines that the parties were not of equal bargaining power, the court may

void the contractual limitation of liability, see for example Fedor v. Mauwehu Council, Boy Scouts of America, Inc. (1958) 21 Conn. Sup. 38, 143 Atlantic 2nd 466 and Kay v. Cain (1946) 81 App. Dc 24, 154 F2nd 305. The question of equality of bargaining power is important when considering the utilization of contractual limitations liability in human service situations involving, for example, handicapped or retarded children. A court would be very reluctant to enforce a contractual limitation of liability against a handicapped or retarded person, because it could not be said that they had equal bargaining power with the provider (not to mention equal capacity to contract).

Another method of avoiding liability that may be available to governmental human service agencies is the limitation of liability that results from the defense of governmental immunity. Under this defense, the government can be sued only with its consent to be sued. However, in recent years, the validity of the defense of governmental immunity has been seriously questioned by the courts; in many states governmental immunity has been voided. Additionally, most states have consented to be sued or alternatively have established boards of claims whereby individuals with claims against the government can file a claim with a particular board.

For example, Tennessee established a "Board of Claims," 9 Tenn. Code Ann. 801 et seq., that provides and imparts as follows:

> Said Board of Claims is vested with full power and authority to hear and determine all claims against the state for personal injuries or property damages caused by negligence in the construction and/or maintenance of state highways, or other state buildings and properties and/or by negligence of state officials and employees of all departments or divisions in the operation of state owned motor vehicles or other state owned equipment while in the line of duty. . . . 9 Tenn. Code Ann. 812.

In this case, the Board of Claims will conduct an investigation and, if necessary, will conduct a hearing. Its decision is final and is not appealable

to any court of law. Governmental human service agencies may be protected by governmental immunity and the Board of Claims may have jurisdiction. Individuals who are injured must look to the Board of Claims and cannot bring a separate action in a court of law.

Another transfer method is special legislative protection conferred on certain classes of individuals to protect them from liability such as school bus legislation. In most states, other vehicles are required to stop when they meet to overtake a stopped school bus. A vehicle that fails to stop and that hurts a school child is guilty of negligence per se for violating the statute. Additionally, school buses are required to be of a special color and marked. In this way, other drivers are to pay special attention to the school buses. To an extent, the risk of protecting the children is transferred from the school bus to other drivers. Additionally, in some localities, the special protection has been extended to other vehicles such as ice cream trucks.

Another technique for transferring risk is to establish a separate organization to provide the transportation. One device tried by several taxi companies was to have each cab become a separate corporation so that, in case of accident, the specific cab (or corporation) would go out of business. Unfortunately, this approach does not meet the humanitarian obligation of the agency to protect the passenger in case of an accident. A more acceptable approach for the human service agency is to establish a separate organization with few assets and having all of the vehicles titled in the name of a county or municipality. Because the operating agency would not have any assets, the liability would be shifted to the county, city or other vehicle "owner."

Insurance. Insurance, of course, is the most common and simplest form of transfer. With insurance, there is a mutually acceptable agreement that, for a stated premium charge, the insurance company agrees to accept, up to policy limits, financial responsibility for the types of losses described in the contract. In effect, the insurance company stands in the place of the agency with respect to payment on the agency's behalf of all losses incurred under the terms of the policy and up to the policy limits. Bodily injury insurance and property damage liability insurance are the most common forms of this type of transfer.

In deciding between retention and insurance, the following principals apply. Other things being equal, insurance should not be bought if the agency can pay the losses directly as they occur because the cost of administration and adjustment expenses can be avoided. Approximately 36 percent of the premium goes for the overhead expenses. This overhead expense includes the cost of services which are performed by the insurance company which would have to be absorbed by the human service agency, including claims adjustment and legal defense in case of suit.

Insurance should not be bought if the agency's estimate of expected losses is significantly less than that assumed by the insurance carrier in the establishment of its premium rates for the particular risk. The losses which the insurance company expect will equal approximately 64 percent of the premium over the long run. This means many agencies will have no losses while a few agencies will have higher losses.

Insurance should not be purchased if the agency believes that it can provide for the losses as they occur and for the required services in connection with these losses at a total cost lower than that charged for these

same losses and services by the insurance company, i.e., if total cost to the agency is less than total premiums, then insurance should not be purchased. Remember, however, that successful application of this criterion is only as good as the confidence the agency has in its estimate of losses and expenses. A substantial amount of additional risk can exist where actual losses and expenses deviate substantially from that which the agency may have predicted. (Remember the concept of variate discussed earlier.)

Pools and Reciprocal Arrangements. Risks can be transferred under arrangements which are very similar to commercial or social insurance but which operate in a slightly different manner. Legislation has been enacted in several states which permit the "pooling" of risks among entities such as municipalities or special interest groups. Unfortunately most human service agencies will not be able to take advantage of this option.

> In 1977 Illinois passed legislation (Religious and Charitable Risk Pooling Trust Act) allowing nonprofit organizations, as defined under section 501 (c)(3) of the Internal Revenue Code, to establish trusts for pooling of the risks of certain financial losses. The Illinois Religious and Charitable Risk Pooling Trust was founded as a result.
>
> The purpose of the trust is twofold:
> - to provide better coverage
> - to lower coverage costs
>
> The trust is owned by contributing members who elect a board of trustees. To date the risk pool concept has been quite successful. Presently there are over 60 members in the trust, which provides liability and property coverage. In its first year, the trust saved beneficiaries an average of 21 percent over previous insurance costs, with more complete coverage, and operated in the black despite initial start up costs. The loss ratio for beneficiaries was a very low 27 percent, much less than the typical loss ratio of an insurance company. These facts provide additional evidence that nonprofit corporations are better risks than insurance companies often give them credit for.

Other Types of Transfer. In addition to the more traditional types of transfers mentioned above, it should be recognized that risk often is transferred involuntarily as a result of legislation. One of the best examples is in the area of social insurance wherein, by statute or court ruling, there is a shifting of responsibilities for payment of medical bills to social agencies such as medicare, medicaid and Veterans Administration benefits. In the case of governmental immunity, on the other hand, the responsibility for a loss is, in a sense, transferred from the governmental agency back to the individuals or entities suffering the loss because of their inability to bring suit against the agency for damages under tort liability. Similarly, no-fault legislation places responsibility for recoveries upon the injured's personal insurance (in a follow-the-family approach) or on the vehicle they are riding in (in a follow-the-vehicle approach) unless injuries exceed a statutory threshold. Thus, responsibility for a loss is transferred by legislation.

In summary, the typical human service agency will probably pursue a combination strategy:

1. Develop an effective referral program to have as many clients as possible use existing transportation providers.
2. Develop an extensive loss prevention program including driver selection and training procedures, maintenance programs, passenger information systems, safety meetings and accident review boards and involve employee, volunteer and contractor drivers.
3. Retain predictable small risks through a small funded self-insurance program.
4. Obtain insurance for larger losses.
5. Take steps to develop legislative protection of human service vehicles when loading or unloading passengers.
6. Coordinate medicaid, medicare and other public benefits to prevent duplicate payments.

7. Seek to have agency-owned vehicle covered by state Board of Claims.

8. Take steps to have human service passenger covered under family vehicle policies (follow-the-family coverage in no-fault state).

Steps 1 through 4 can be done by individual agencies. Steps 5 through 8 will require cooperative action.

CHAPTER VIII

PROCUREMENT OF INSURANCE

Purpose: One role of the risk manager is the procurement of insurance. This cannot be done effectively unless the risk manager understands the range of policies available, the basis upon which those policies are rated, and the flow of communications between the insurance broker and the underwriter. This chapter is designed to provide the information which should make the risk manager an effective procurer of insurance for human service agencies.

As stated in Chapter VII, risk is commonly transferred by the procurement of insurance. Knowledge of the types of insurance available and how rates for each type are applied is necessary in order to manage the transfer of risk through insurance. Insurance rates reflect not only the expected losses of an exposure and the cost of administering the insurance mechanism, but also the degree of uncertainty that the exposure represents to the underwriter. If the underwriter is not given complete information about the exposure, there is a tendency for the underwriter to classify the exposure as a more risky type. To avoid unduly high insurance rates because of uncertainty, an agency needs to communicate completely with an insurance company so that the agency's operation is well understood. The agency should be armed with the information needed to convince an underwriter that its program is a better than average risk. A sample form for providing such information to an insurance underwriter is given in Appendix C. If an agency has additional information which would indicate that it is an especially low risk, this additional information should be included. What should be avoided is any form of misrepresentation. If a program is described as being well managed and risk-free to get low insurance rates the first year but has many claims, there will be not only higher rates the

following year, but also a loss of credibility. The underwriter will have little confidence in the applicant and probably will cancel the policy or will impose a high rate.

Three types of insurance to consider when an organization operates a transportation program are vehicle insurance, worker's compensation and liability insurance.

Vehicle Insurance

Automobile Liability Insurance. Automobile liability insurance for commercial vehicles provides coverage for liability arising out of the ownership, maintenance or use of an automobile. The commercial automobile liability policy differs from private automobile liability policies in that the commercial policy covers only the one specific vehicle driven by individuals who have specific permission to drive. (The normal private automobile policy covers not only the specific vehicle, but also members of the household who are driving other vehicles.) Vehicle liability insurance for human service transportation programs is rated according to a recently developed classification for social service agencies. A technical advisory explaining the rating process under the new classification is New Insurance Programs for Human Service Transportation Providers. This document is available from the U.S. Department of Health and Human Services regional offices.

Uninsured Motorist Insurance. Uninsured motorist insurance is designed to protect the insured from acts of financially irresponsible drivers. A large percentage of vehicles do not have insurance. This coverage allows the recovery, up to the policy limit, of the amount of compensation that would have been received had the negligent driver had adequate insurance or

from a driver who is unknown (hit-and-run). (This coverage is primarily for the benefit of the passengers because the vehicle would be covered under collision and the driver would be covered under worker's compensation.) The cost is relatively low, but the possibility for its use is relatively high. Five percent of the claims made for automobile injury compensation are under uninsured motorist coverage.*

Personal Injury Protection. Personal injury protection is available to cover the passenger in no-fault states. In 16 states, modified no-fault automobile insurance has been legislated. In a no-fault system, persons suffering bodily injuries because of an automobile accident will seek recovery from their own insurance companies. The tort liability system in which fault must be established before compensation is received is bypassed. In actuality, states have modified the no-fault concept so that the injured may pursue tort action in court when damages are above a threshold level. (Table VIII-1 lists the maximum benefits available under the no-fault personal injury protection and the threshold levels at which individuals may resort to tort suit.) In these states, automobile liability insurance is replaced (to the extent that tort liability is restricted) by personal injury protection insurance, which is first-party coverage for medical expenses, wage loss, vocational rehabilitation and replacement of essential services. In no-fault states, personal injury protection coverage accounts for more than 75 percent of the claims and 34.5 percent of the dollars paid. Table VIII-2 shows the distribution of claims against each type of insurance coverage for tort states, no-fault states and states that have added personal

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*All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 19

TABLE VIII-1

PERSONAL INJURY PROTECTION BENEFIT LEVELS AND THRESHOLD LEVELS OF NO-FAULT STATES

State	Maximum No-Fault Benefits	Threshold (tort suit allowed when injury exceeds this amount)
Colorado	$62,975	$ 500
Connecticut	5,000	400
Florida	5,000	90 day disability
Georgia	5,000	500
Hawaii	15,000	Variable annually
Kansas	15,180	500
Kentucky	10,000	1,000
Mississippi	2,000	500
Michigan	Unlimited	none
Minnesota	30,000	2,000
Nevada	10,000	750
New Jersey	Unlimited	$200 w/o hospital
New York	50,000	90 day disability
North Dakota	15,000	1,000
Pennsylvania	Unlimited	750
Utah	16,180	500

Source: Vaughn, E.J. and C.M. Elliott, Fundamentals of Risk and Insurance, New York: J. Wiley and Sons, 1978, pp. 454-455.

TABLE VIII-2

DISTRIBUTION OF CLAIMS UNDER TYPES OF COVERAGE FOR TORT, NO-FAULT AND ADD-ON STATES

Coverage	% of Total Claims	% of Total Payments
	Tort States	
Bodily Injury	57.7	78.1
Uninsured Motorist	7.8	11.4
Medical	31.3	8.6
Personal Injury Protection	3.1	1.9
	No-Fault States	
Bodily Injury	20.5	57.3
Uninsured Motorist	2.2	7.3
Medical	2.0	0.9
Personal Injury Protection	75.3	34.5
	Add-On States	
Bodily Injury	49.2	69.9
Uninsured Motorist	3.9	7.9
Medical	11.3	4.1
Personal Injury Protection	39.7	18.1

Source: All-Industry Research Advisory Council, Automobile Injuries and their Compensation in the United States, Chicago: Alliance of American Insurors, 1979, p. 80.

injury protection to an existing tort liability system (add-on states). Bodily injury liability insurance still accounts for 57.3 percent of the total payments made for automobile injuries in no-fault states. Add-on states allow the purchase of personal injury protection even though a no-fault law has not been passed. In these cases, the personal injury protection is similar to vehicle medical coverage expanded to include wage loss, vocational rehabilitation and replacement of essential services.

Collision and Comprehensive Coverages. Collision and comprehensive coverages are designed to repair or replace the vehicle in cases where it is damaged and the damages cannot be recovered from another party. Collision coverage pays the cost of restoring or replacing the vehicle (less the deductible) when the vehicle is damaged by a collision or upset. Comprehensive covers noncollision losses such as fire, theft, flood, hail, vandalism, falling objects and collision with an animal.

The upper limit of this coverage is the market value of the vehicle at the time of accident. Thus, the total exposure decreases each month that the vehicle is owned. Various guidelines are used. Some automobile lease firms estimate the decrease in value of a vehicle to be 2 percent per month. Another rule of thumb is that a two year old vehicle depreciates 50 percent during the first two years and $800 to $1,000 during the third year. If the mileage is greater than 15,000 miles per year, depreciation may be even greater.

Table VIII-3 shows how the cost of collision and comprehensive insurance coverage varies with both the purchase price of the vehicle and the age of the vehicle. Unfortunately, rates do not decrease as fast as the vehicle depreciates. This is because the cost of body work and repair parts do not

TABLE VIII-3

COMPREHENSIVE AND COLLISION CLASSIFICATION
(Sample Rates for Tennessee)

Original Cost New & Codes	Age Group	Other Than Collision				Collision			
		Specified Perils	Comprehensive Deductibles			Deductibles			
			Full	$50	$100	$100	$250	$500	$1,000
		Coverage Costs							
		(020)	(001)	(003)	(010)	(074)	(076)	(077)	(078)
$ 0-	1	$ 17	$ 25	$ 18	$ 17	$ 60	$ 47	$ 34	$ 21
3000	2,3	15	23	16	15	54	42	30	19
(1)	4,5	13	20	14	13	48	38	27	17
	6	11	16	11	11	39	31	22	13
3001-	1	32	49	34	32	105	94	70	43
4500	2,3	29	44	31	29	95	85	63	39
(2)	4,5	25	39	27	25	84	75	56	35
	6	21	32	22	21	68	61	45	28
4501-	1	44	68	47	44	149	137	102	64
6000	2,3	40	61	43	40	134	124	91	58
(3)	4,5	35	54	38	35	119	110	81	51
	6	29	44	31	29	97	89	66	42
6001-	1	59	90	63	59	201	188	139	88
8000	2,3	53	81	57	53	181	169	125	80
(4)	4,5	47	72	50	47	161	150	111	71
	6	38	59	41	38	131	122	90	57
8001-	1	76	116	81	76	261	248	207	145
10000	2,3	68	104	73	68	235	223	186	130
(5)	4,5	61	93	65	61	209	199	165	116
	6	49	75	53	49	170	161	134	94
10001-	1	106	161	113	106	338	327	273	190
15000	2,3	95	145	101	95	305	294	245	171
(6)	4,5	84	129	90	84	271	262	218	152
	6	69	105	73	69	220	213	177	123
15001-	1	148	225	158	148	408	397	333	231
20000	2,3	133	203	142	133	367	357	299	208
(7)	4,5	118	180	126	118	326	317	266	185
	6	96	146	102	96	265	258	216	150
20001-	1	189	289	202	189	457	442	368	258
25000	2,3	170	260	182	170	411	398	332	232
(8)	4,5	152	231	162	152	365	353	295	206
	6	123	188	131	123	297	287	240	167
25001-	1	274	418	292	274	547	534	447	312
40000	2,3	246	376	263	246	492	481	403	481
(9)	4,5	219	334	234	219	438	427	358	250
	6	178	271	190	178	356	347	291	203
40001-	1	443	675	473	443	763	741	619	432
65000	2,3	398	607	425	398	687	667	557	389
(9)	4,5	354	540	378	354	611	593	495	346
	6	288	439	307	288	496	481	402	281
Over	1	674	1029	720	674	951	925	773	541
65000	2,3	607	926	648	607	856	832	695	487
(9)	4,5	539	823	576	539	761	720	618	433
	6	438	669	468	438	518	601	502	352

Coverage	Code	Multiply the Coverage 020 premium by:
Fire Only	011	.35
Fire and Theft Only	012	.75
Fire, Theft and Windstorm Only	031	.85
Limited Specified Perils	021	.95

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change substantially with the age of the vehicle. The decrease in premium is, therefore, primarily a measure of the reduction in risk should the vehicle be destroyed--that is, it would cost more to fix the vehicle than the market value of the vehicle..

Another important component of the rate is the deductible. Most vehicle damage claims are very small. It is the few large claims that make up the major dollar losses. Because most agencies are able to retain a $50 to $250 loss, a larger deductible is probably beneficial because it costs the insurance company almost as much to adjust a $50 loss as it does a $10,000 loss.

Medical coverage is a specialized form of health insurance which provides medical payments to persons injured during the operation of an automobile. The coverage provides medical, surgical, dental and funeral expenses for the insured, passengers within the insured's vehicle and pedestrians struck by the insured up to the limits specified in the policy. It is first-party coverage so that no negligence or liability need be established in order to collect. Benefits provided by medical payments coverage are in addition to benefits received from other sources. Other benefit sources may include the injured's health and accident insurance, an employer's worker's compensation insurance, medicaid, medicare and the Veterans Administration.

Medical coverage is a common component of private vehicle insurance coverage. Some insurance companies, however, discourage medical coverage on commercial vehicles for the following two reasons:

- The drivers of most commercial vehicles are employees and are thus covered under worker's compensation.

- For-hire passenger carrying vehicles should only pay claims where the carrier is negligent and these claims should be paid under the liability coverage.

For these reasons some insurance companies may be reluctant to write medical coverage on human service agencies. This may not be detrimental since most human service passengers will be covered by medicaid, medicare, Veterans Administration or other government benefits for medical expense.

Because most medical claims are small, higher limit medical coverage can be obtained at a very low incremental cost. Unlike liability limits which are on a per accident basis, medical limits are on an individual passenger basis. Thus, a $5,000 medical policy on a human service van may provide $75,000 ($5,000 x 15 passengers) in medical benefits (see Table VIII-4 for sample rates).

Worker's Compensation Insurance

All states require that employers carry worker's compensation insurance. The employer is made absolutely liable for a worker's injury and is required to compensate the employee without regard to fault. (Volunteers may be included in the coverage in some states.)

Worker's compensation establishes a schedule of compensation benefits that will be paid in case of a work related accident. Table VIII-5 summarizes the scheduled benefits for specific injuries under all of the states' worker's compensation laws. In case of disability, worker's compensation provides a percentage of the employee's wages (typically 66-2/3 percent) to be paid during the period of the disability. In case of death, dependents will receive a percentage of the deceased employee's wages up to a stated dollar limit. (The average maximum weekly amount for all 50 states is

TABLE VIII-4

SAMPLE MEDICAL INSURANCE RATE
(Tennessee)

	Taxicabs and Limousines				Van Pools			
	Limit of Liability							
	500	1,000	2,000	5,000	500	1,000	2,000	5,000
Terr. Code	Limit Code							
	1	3	4	6	1	3	4	6
001	$153	$179	$204	$231	$39	$46	$51	$73
002	114	133	152	209	27	32	35	50
003	108	120	137	189	26	31	35	50
004	112	131	150	206	29	34	38	54
005	56	65	75	103	14	17	19	27
006	57	67	77	106	16	19	21	30
009	53	62	72	98	13	16	18	25
010	51	60	69	95	14	16	18	26
011	59	69	80	109	16	19	21	30
012	59	69	80	109	16	19	21	30
	School Buses and Church Buses				Other Buses			
	Limit of Liability							
Terr. Code	500	1,000	2,000	5,000	500	1,000	2,000	5,000
	Limit Code							
	1	3	4	6	1	3	4	6
001	$21	$25	$29	$ 34	$116	$135	$153	$211
002	16	19	22	26	111	130	147	203
003	21	26	30	35	115	134	152	209
004	18	21	24	29	115	134	152	209
005	12	15	17	20	86	101	114	157
006	13	15	18	21	87	101	114	158
009	11	14	16	19	86	101	114	157
010	11	14	16	19	86	101	114	157
011	14	16	19	22	86	101	114	157
012	14	16	19	22	86	101	114	157

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TABLE VIII-5

SCHEDULED INJURY BENEFITS UNDER WORKER'S COMPENSATION

Injury	High of all states	Mean of all states	Low of all states
Arm at shoulder	$87,330	$29,680	$ 1,200
Hand	71,355	23,800	8,736
Thumb	21,471	8,001	4,200
First Finger	12,269	4,827	1,568
Second Finger	10,736	3,827	1,008
Third Finger	7,668	2,723	850
Fourth Finger	6,135	2,173	392
Leg at Hip	87,330	27,884	9,360
Foot	53,250	19,173	6,300
Great Toe	10,736	4,019	1,200
Other Toes	3,681	1,440	340
One Eye	58,575	18,225	6,000
Hearing in One Ear	22,500	7,110	2,000
Hearing in Both Ears	61,346	21,772	8,000

Source: Analysis of Worker's Compensation Laws, Washington, D.C.: Chamber of Commerce of the United States, 1978, p. 22.

$154.20 per week.) For a detailed analysis of worker's compensation benefits on a state-by-state basis, contact the Chamber of Commerce of the United States which annually compiles Analysis of Worker's Compensation Laws.

It is important to remember that worker's compensation benefits are set by state law and are not subject to court interpretation under tort. Also, worker's compensation benefits are usually primary--that is, the driver will be covered by worker's compensation and not by automobile insurance.

Worker's compensation rates are based on a percentage of the total payroll. The specific rate depends upon the work classification and the area of the country. Table VIII-6 gives several sample rates. It is important to make sure that the right classifications are used.

Liability Insurance

General Liability Insurance. Automobile insurance only covers injuries caused while entering, riding in, or exiting from the vehicle or injuries to a person hit by the vehicle. Worker's compensation only covers individuals who are employees (and, in some states, volunteers) working for the agency. If a human service beneficiary is injured outside of the vehicle (such as when the driver or attendant is providing passenger assistance), coverage must be under a general liability policy. General liability insurance also covers any other liability that agency may have to individuals who are injured on agency premises. For example, if the agency has a congregate meal center, it probably already has a liability policy. If it also provides transportation, the general liability insurance would cover employees (or volunteers) providing curb-to-curb or door-through-door passenger assistance.

TABLE VIII-6

SAMPLE OF WORKER'S COMPENSATION INSURANCE RATES
(Tennessee)

Class	ISO Class Code Number	Rate Per $100 Payroll
Homes for Aged Employees	8829	$2.86
Camp Operation (nontourist)	9015	2.79
Apartment Employees	9023	2.79
Garage Employees	8385	2.79
Asylums		
(nonprofessional employees)	9040	2.47
(professional employees)	8833	.33
Restaurant Employees	9058	2.41
Church/School		
(nonprofessional employees)	9101	1.70
(professional employees)	8868	.27
Athletic Team (nonplayers)	9182	1.46
Charitable Organization Employees	8837	Refer to Company
Nonprofit Homemaker Service Employees	8835	1.41
Youth Recreational Program	9063	.90

Source: National Council on Compensation Insurance, New York, New York, 1979.

The classification procedure for general liability insurance is based on the use of the facility. There is not a specific category for human service transportation so the classification will be based on the human service agency type (see Table VIII-7 for sample rates). Rates are generally given on the basis of dollars per square foot of building space, although some are based on the number of members (or students) or the number of activities. In several cases, rates are not given. Agencies must refer the risk to the company for a rate. The sample rates given in Table VIII-7 are for a $25,000 policy limit. For higher limits, the sample rates must be multiplied by the appropriate extended limits factor (Table VIII-8).

Liability Insurance for Errors and Omissions. Liability for errors and omissions made by the officers and directors of an organization is covered by a special type of insurance called errors and omissions insurance. This coverage protects corporate directors from suits because of alleged or actual errors, misleading statements, acts of omission, neglect or breach of duty. The policy generally has two parts. The first part protects the directors individually; the second part protects the organization itself. This type of coverage is generally used when the agency officers and directors have access to substantial funds. Usually there is a $5,000 deductible. Availability of this type of insurance is very limited.

Special Insurance Cases

Human service agencies frequently use staff members, part-time employees and volunteers to transport program beneficiaries in their own privately-owned vehicles. The report, New Insurance Programs for Human Service Agencies, Technical Advisory #1, available from the U.S. Department of Health, and Human Services regional offices provides detailed information on the new

TABLE VIII-7

PREMISES/OPERATIONS BODILY INJURY
GENERAL LIABILITY RATES FOR SELECTED CLASSIFICATION
(Knoxville, Tennessee and Duluth, Minnesota)

Description	ISO Code	Rate (TN) $/ft^2	($25 K Limit) (MN) $/ft^2
Apartments	65132	$1.30	$2.50
Asylums	80991 sj	1.30	0.37
Auto Repair Shops	75304	N/A	0.80
Office Buildings	65121	2.40	2.80
Churches	86612 s	1.40	3.10
Clubs With Offices Only	86415	0.13 (per member)	0.17
Convalescent Homes, Not Mental	80924 sj	4.30	1.70
Day Nurseries	82215	2.80	9.40
Government Agencies	N/A	N/A	N/A
Local Government Employees	93111	Refer to Company for Rate	
Local Government Offices	65121	2.40	2.80
Homes for the Aged	80921 sj	1.70	0.55
Hospitals	80611 sj	2.40	1.30
Mental Institutions	80997 sj	2.40	.68
Colleges	82210 j	0.56	1.90
Public High Schools	93221 s	0.36 (per pupil)	1.60 (per pupil)
Social Gatherings	79111 s	6.30 per location per day	7.50 per day
Sports Programs for Youths	79401	Refer to Company for Game Rate	
Taxicab Companies	65121	2.40	2.80
United Service Organizations	86412	1.50	1.90
YMCA, YWCA	86411 k	2.50	4.10
Youth Recreation Programs	86414	Refer to Company	

TABLE VIII-8

EXTENDED LIMITS

Limit Per Occurrence	Factor A	Factor B
50	1.18	1.15
100	1.26	1.26
250	1.39	1.39
500	1.63	1.63
1,000	1.93	1.88

Note: If symbol "s" occurs after ISO code in Table VIII-7, use Factor A; otherwise, use Factor B.

Source: Insurance Services Office, Commercial Lines Manual, Division Six--General Liability, 1979.

insurance classifications and how to use them. This report also explains how contractors can take advantage of the new insurance classifications and rates.

Rate Plans

Insurance rates can be quoted in many ways. In each case the rate includes an amount to pay losses and administrative costs, as well as a risk factor amount.

Guaranteed Rates. Most individuals and small agencies will purchase insurance on a guaranteed rate basis. When this premium is paid, the insurance company agrees to pay all losses up to the policy limit, to pay all legal costs and administrative costs and to accept all risk of very large (or small) losses. No further charge (or rebate) will be due the insured.

Experience Rates. Very large organizations (those that generate over $50,000 of premium each year) may set up an experience rating program. Here the rate will be equal to the losses paid by the insurance company plus an administrative charge. In most cases there will be a minimum premium in case there are no losses and a maximum premium in case there are very large losses. For example, if the guaranteed rate is $200,000 per year, the experience rate may be 1.2 times annual losses with a minimum premium of $75,000 and a maximum premium of $325,000. In some cases, the rate is determined by the losses during that year. This is called "retrospective rating." In this case, the agency would pay the annual premium of $200,000. At the end of the year, all losses would be totaled. In good years, the agency would receive a rebate of as much as $125,000. In a bad year, the agency could be expected to make an additional payment of up to $125,000. In other cases, the losses in the past year determine the premium in the

current year. This approach is used where the organization would have difficulty coming up with the additional funds. This is called "prospective rating."

In cases where the insured is willing to assume the entire risk, the rate is simply loss plus an administrative charge with no minimum or maximum rate. This is called "administrative only" coverage.

In general, small agencies will purchase insurance at the guaranteed annual rate basis. However, agencies can combine to purchase insurance coverage collectively where this is permitted by law. This "bulk buying" is effective in that enough premium is involved to justify the insurance company's assigning a safety engineer to work with the group to set standards and to make a special study of the agency program. The advantage of such an approach is that it allows the accumulation of enough premium dollars to justify an immediate study by the insurance safety engineers and a quick fix adjustment in premium. The disadvantage is the need to structure an organization to purchase the insurance in bulk, to enforce risk management program and to prohibit individual groups from independently soliciting coverage on their own. An excellent example of group buying is the Oregon Special Services Association.

Obtaining Insurance Coverage

There are several steps to be followed in obtaining insurance for the human service transportation program.

1. Identify those risks to be insured. For example, X vehicles owned by agency (liability, property damage, comprehensive collision), Y volunteer drivers (liability of the agency, liability of the volunteer) and Z employee drivers (worker's compensation coverage).

2. Locate several (three to six) of the better insurance brokers in the community.

3. Prepare a summary of the program so that brokers effectively can sell the program to the underwriters of the insurance companies. The more information provided, the easier it is for the broker to sell the program. The more professional that the information is, the more professional the program will seem to the underwriter.

4. Send copies of the program description and ask for a quotation. (The insurance industry does not like the words "competitive bid.") Give the local broker adequate time to review the agency's insurance needs and to receive quotations from the various insurance companies.

5. Select the insurance quotation which provides the best combination of rates and services.

6. Arrange to have the annual renewal date of the policy correspond with the agency's budget year so that the new insurance premium for the coming year is known in time for planning the agency's annual budget. The policy anniversary date and date when renewal information must be provided may be specified.

CHAPTER IX

EVALUATION AND FEEDBACK

Purpose: Even the best risk management programs must change as the needs of the agency change. Therefore the risk management program must contain a feedback system for identifying changes when changes are needed.

A human service agency must establish a variety of procedures to ensure that its risk management program is always up-to-date and effective. Any risk management program must be modified regularly to keep it current with respect to changing risks and their requirements. Also, decisions made in the past based upon data which now are no longer appropriate must be reviewed to be sure that the program adopted is still viable.

Record Keeping

Fundamental to the review and evaluation procedure is feedback. Unless the agency has ongoing access to useful data concerning the efficiency and effectiveness of the program, it can have little confidence that its risk management program, no matter how carefully considered and evaluated at the time of adoption, is still appropriate. Record keeping, therefore, becomes an important lifeline of the plan. Accurate and correct data concerning costs, losses, insurance premiums, expenses of services, changes in risk exposure and changes in contractual or other obligations must be readily available to provide a basis for statistical evaluation of the success or failure of the plan.

Records should be kept of any bodily injury or property damage losses arising out of the operation of the transportation service with respect to the general public and employees. A system of accurate and simplified accident

reports should be implemented. This system should reveal the details concerning the time, place and circumstances surrounding the loss as well as the specific type and amount of injury or damage incurred and care provided. Further general records should be kept concerning incurred losses, paid losses and contested or pending losses. Allowance should be made for losses which, because of delays in reporting, may have been incurred but have not yet been reported.

Detailed insurance premiums and other cost histories should be kept as a means of evaluating the cost of transfer of risk. Wherever risk is retained, accurate records should be kept of the amounts retained, the losses incurred and paid under such retention plans and the costs associated with such retention. Whenever advance preparation is made for loss payments through reserve funds, savings balances or investments, accurate records should be kept of deposits, disbursements and earnings on these funds as well as of any additional costs associated with administration and investment.

Data should be kept to compare the costs of the operation of the risk management plan relative to the overall financial costs of the agency's operation. An important element in such cost analysis would be the salary and fringe benefit costs of employees' time devoted to the operation of the risk management program. Even though losses may be kept within acceptable ranges, administrative costs of a risk management plan might become prohibitive.

Careful records should be kept of any expenditures for safety programs, safety education and loss prevention activities. These costs must be weighed carefully against anticipated and actual results in terms of loss savings. The ultimate justification of any loss control program has to be proof that the reduction in loss costs exceeds the cost of the loss control program.

Periodic Testing of the Market

A good decision based upon a set of variable factors quickly can become a bad decision if those variables change. Because of the competitiveness and volatility of the insurance industry, close attention should be paid in operating any risk management program to any changes affecting the cost of insurance in the marketplace. Insurance prices vary from time to time because of such factors as loss experience, earnings on investments, changes in expenses, competition and legislation. Insurance availability also varies due to the insurance companies' need to maintain reserves. The insurance codes of most states require that insurance companies maintain a reserve of assets in recognition of their obligation to policyholders for future claims. The insurance companies therefore are limited in the short term to writing no more insurance than their reserve funds will allow. Relative to alternatives such as retention or self-insurance, changes in the market price and availability of commercial insurance coverage may very well tip the balance for or against commercial insurance in the retention versus insurance decision process.

The best way to test the insurance market as to price competitiveness and attractiveness with respect to the agency's need for this kind of transfer is to periodically "rebid" insurance needs. This applies not only to programs that are self-insured (where consideration is being given to commercial insurance) but also to risks which presently are insured through a commercial contract (where price increases may make initial decision subject to further evaluation and question). This reconsideration, of course, cannot be done in a vacuum but has to be done with regard to the basic decisions involved in the entire risk management program. From one time period to another, a risk which initially was best to insure might now be a risk which is better to retain

because of intervening insurance cost changes or vice versa. This same rationale must be applied to every aspect of the risk management program. For example, a safety program which may have resulted in substantial savings in its initial years may no longer be returning "dividends" but instead may be incurring operational costs in excess of its actual loss cost savings. If so, it would be time for a change.

Finally, a system of regular monitoring must be established to recognize changes in risk exposures (the purchase of a new vehicle, for example). Changes in laws, activities, personnel, services, governmental responsibilities and managerial decision making all could result in new or changing risk exposures, and each might have significant impacts upon the appropriateness of an existing risk management program. The entire area of risk management is volatile, so a risk management program must be responsive to this volatility to ensure that the program is always "ahead" in its anticipation of and provision for potential risks so that, at the time of any loss, resources available through the plan will match those required.

APPENDIX A

THE SAFETY MEETING

The purpose of a safety meeting is to reduce the company's accident, insurance and operating costs and to improve the personal safety of employees. It should give all attendees the desire and knowledge to increase efficiency and to reduce accidents and injuries.

The meetings should be scheduled regularly and should be attended by management and drivers. The intention is to form a bond of understanding concerning accident prevention between management and employees.

Like any meeting, the safety meeting involves four factors: time, place, audience, and subject matter.

Time

Time for the meeting is best in the morning when the drivers are fresh or at least sometime during the working day. Meetings at the end of the day, when drivers are thinking about going home, are less effective. Meetings held in overtime periods may be resented by drivers if they are not compensated for their time, or they may be too costly for the agency if the drivers are compensated.

Place

The place of the meeting should be in a suitable meeting room with audiovisual equipment and blackboard.

Audience

The audience for the meeting will consist of the drivers and the managers or administrators of the agency. Assembling all of the drivers in one place at one time may be difficult as the drivers' schedules and dispatching may

be spread throughout the entire day. Multiple meetings may be held to include all drivers.

Subject Matter

The subject matter of the meeting should focus on accident prevention and loss reduction. The safety meeting message may be part of a more broad staff meeting agenda. One way to present the safety message is to center the message around a driver training or safety movie. The meeting leader can assemble the drivers, briefly describe the film to be shown, show the film and then discuss the main points of the film as they relate to specific agency problems or situations. Films can be obtained from the National Safety Council, 444 N. Michigan Avenue, Chicago, Illinois 60611.

The National Safety Council also has three books containing short talks with a practical vein about what drivers should be told about good driving. These books are good for talking to drivers in a person-to-person encounter or a group meeting. Safety magazines, bulletins and posters can supplement the meeting.

APPENDIX B

ACCIDENT REVIEW FORM

1. Name of Employee _____

2. Department _____

3. Date of Accident _____

4. Time _____

5. Vehicle Identification Number _____

6. Location of Accident _____

7. Name(s) of other party(ies) involved _____

8. Type of Accident: Struck vehicle ahead _____

   Struck by vehicle behind _____ Backing _____

   Side swipe _____ Animal _____ Pedestrian _____

   With fixed object _____ Run of the road _____

   Bicycle _____ Head on _____ Passenger _____

9. Vehicle Damage: Explain.

   a. Minor _____

   b. Major _____

   c. Moderate _____

   d. Total _____

10. Were there any injuries or deaths? _____

    Describe injuries. _____

11. Did police investigate the collision? yes _____ no _____

12. Did employee violate a traffic regulation? _____

    Did other driver violate a traffic regulation? _____

13. Was employee given a citation by the police? yes _____ no _____

    Was the other driver given a citation? yes _____ no _____

14. What did the employee do (or fail to do) that caused him to be involved in this collision? _____

15. Did employee claim that any malfunctioning or defective vehicle component(s) caused the accident? Explain. _____

_____

16. Explain what the following conditions were like at the time of the accident.

Traffic _____ Weather _____

Light _____ Road _____

Loading Area _____ Passenger Securement _____

17. What was the condition of the driver? Explain.

Apparently normal _____

Fatigued _____

Sick _____

Intoxicated _____

Other _____

18. Was the collision preventable? yes _____ no _____

19. If preventable, what corrective action do you recommend to prevent a future occurrence of the same type of collision? _____

_____

_____

20. Is disciplinary action recommended? _____

21. Name(s) of passenger(s) _____

Address _____

22. Passenger comments about the accident: _____

_____

_____

23. How was the passenger injured? _____

_____

24. What was the extent of passenger injuries? _____

_____

APPENDIX C

REQUEST FOR INSURANCE QUOTE

Name of Agency: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of Insured: _____

Contact Person: _____ Phone No.: _____

INSURANCE QUOTES DESIRED

Type	Deductible Desired	Limits Desired
Automobile Coverage		
Liability - Bodily Injury		_____
Property Damage		_____
Comprehensive	_____	
Collision	_____	
Medical		_____
Uninsured Motorist Coverage		_____
Personal Injury Protection		_____
Other		
_____		
_____	_____	_____
Worker's Compensation Coverage		_____
General Liability		_____

Cut off date for submitting insurance quotes _____

Person to contact if insurance company has questions concerning request.

Name: _____

Phone No.: _____

AGENCY PROFILE

What is the primary purpose of the agency? _____

_____

_____

_____

In which counties or districts does the agency provide transportation service?

_____

_____

_____

What is the agency's annual budget? _____

What are the program funding sources? _____

What is the agency's annual transportation budget? _____

DRIVER PROFILE

NAME	AGE	TYPE OF LICENSE	LICENSE NUMBER	PART-TIME OR FULL-TIME	YEARS WITH AGENCY	NO. OF DISCIPLINARY ACTIONS	NO. OF PASSENGER COMPLAINTS	NO. OF PASSENGER COMPLIMENTS	DRIVER'S TRAINING*								
									DDT	FAI	FAII	CPR	PAT	HRS	BTOS	NME	055

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*DDT - Defensive Driving Training
FA I - Primary First Aid Training
FA II - Advanced First Aid
CPR - Cardiopulmonary Resuscitation
PAT - Passenger Assistance Training
HRS - Human Relations Skills
BTOS - Basic Transportation Operational Skills
NME - Nonmedical Emergency Training
055 - Over 55 Special Training

√ - Yes
NA - Not Applicable for Type of Service Provided by Agency

VOLUNTEER PROFILE

NAME	AGE	TYPE OF LICENSE	LICENSE NUMBER	LENGTH OF SERVICE	AVERAGE HOURS PER MONTH DRIVING AGENCY VEHICLE	AVERAGE HOURS PER MONTH DRIVING PERSONAL VEHICLE	DRIVER'S TRAINING* DOT	FAI	FAII	CPR	PAT	HRS	BTOS	NME	055

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*DDT - Defensive Driving Training
FA I - Primary First Aid Training
FA II - Advanced First Aid
CPR - Cardiopulmonary Resuscitation
PAT - Passenger Assistance Training
HRS - Human Relations Skills
BTOS - Basic Transportation Operational Skills
NME - Nonmedical Emergency Training
055 - Over 55 Special Training

VEHICLE PROFILE

YEAR	MAKE	MODEL	PASSENGER SEATING CAPACITY (EXC. DRIVER)	TOTAL MILEAGE ON VEHICLE	EQUIPMENT				
					WHEEL-CHAIR LIFT	2-WAY RADIO	FIRE EXTINGUISHER	ACCIDENT REPORT PACKAGE	SEATBELTS

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PASSENGER PROFILE

Number of individuals who use service _____

Number of annual one way trips _____

Percentage of riders who are elderly _____

Percentage of riders who are handicapped _____

Percentage of riders who use wheelchairs _____

Percentage of school age riders _____

Percentage of riders who are preschool children _____

Percentage of riders who are unemployed _____

Percentage of riders who are covered by:

Medicaid _____

Medicare _____

Veterans Administration Benefits _____

Other Government Benefits _____

What types of records are kept on program beneficiaries? _____

_____

_____

MAINTENANCE

Describe the agency's preventive maintenance procedures. _____

_____

_____

Are daily maintenance checks performed? _____

Are records kept of maintenance? _____ Describe these records.

_____

_____

_____

Where are vehicles maintained? _____

Describe the agency's equipment/vehicle replacement schedule? _____

_____

_____

DRIVERS

Describe the agency's driver selection procedure and the criteria for selecting drivers. _____

_____

_____

_____

How many drivers are hired each year? _____

_____

Describe the agency's driver briefing procedure. How are drivers oriented into their jobs? _____

_____

_____

_____

Describe any special driver training that the agency's drivers receive. _____

_____

_____

_____

Check the types of training which agency drivers receive.

___ General driver orientation

___ Defensive driving course

___ Primary first aid

___ Advanced first aid

___ Cardiopulmonary resuscitation

___ Passenger assistance training

___ Human relations skills

___ Nonmedical emergency training

___ School bus driver training program

Describe emergency medical training and instruction given drivers on when to render first aid. _____

_____

_____

_____

What records are kept on the agency's drivers? _____

_____

_____

Name and address of physician who gives physical examination. _____

_____

_____

How are the drivers dispatched or scheduled? Are drivers given information about the special needs of specific clients? _____

_____

_____

What kind of system does the agency have for obtaining backup drivers when regular emploeers are not available? _____

_____

_____

SUPERVISION

Who is responsible for safety and risk management in the organization?

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Describe this person's duties in this area. _____

_____

_____

_____

Describe the agency's accident review procedures and actions which might be taken as a result of an accident review. _____

_____

_____

_____

Describe the agency's safety meetings or other methods by which safety is kept in the minds of drivers (literature, posters, awards, etc.). _____

_____

_____

_____

What control is exercised over transportation-related services that are performed by contractors? _____

_____

_____

_____

Submit copy of agency's contingency procedures.

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